



APR 23 2012

REGISTERED MAIL

Nesathurai & Luk LLP
Barristers and Solicitors
Munich Re Centre
390 Bay Street, Suite 802
Toronto, ON M5H 2Y2

Attention: Mr. Hari S. Nesathurai

BN: 88623 2198 RR0001

File #: 1008572

**Subject: Notice of Penalty -
 Hindu Mission of Mississauga**

Dear Mr. Nesathurai:

I am writing further to our letter dated August 16, 2011 (copy enclosed), in which you were invited to submit representations as to why we should not assess a penalty to the Hindu Mission of Mississauga (the Mission) in accordance with section 188.1 of the *Income Tax Act*.

Our letter advised that we would be prepared to forego revocation action in favour of the imposition of a penalty in the amount of \$301,869 assessed under subsections 188.1(4) and (9) of the Act,¹ and the signing of a Compliance Agreement containing certain remedial actions that the Mission agrees to undertake to ensure compliance with the Act. On January 8, 2012, your client signed the Compliance Agreement.

We have now completed our review of the Mission's representation of October 28, 2011, outlining the reasons for which it should not be assessed a penalty based on amounts provided to non-qualified donees, namely the Tamils Rehabilitation Organization (TRO) in Sri Lanka and the North and East Community Development Organization (NECDO), also of Sri Lanka, in addition to a penalty for issuing donation receipts on behalf of, or in the name of, the Gods Own Children Foundation. Your letter states, in part, that the Mission should not be assessed a penalty, because:

- it "used the proceeds received from the donations for the intended purpose and did not retain or receive any economic benefit or gain from the money that is being sought in the proposed reassessments";

¹ The penalty amount of \$301,869 represents: \$295,557 (105 per cent of \$281,483) for gifts provided to non-qualified donees outside Canada; and \$6,312 (125 per cent of \$5,050) for issuing receipts on behalf of, or in the name of, another person.

- it "is not in a financial position to satisfy the proposed reassessment", and "the Charity would become insolvent"; and
- the donations "have been made for proper purposes".

We have carefully considered your representations in support of your client's position and disagree. Consequently, for the reasons set out below, and in our letter of August 16, 2011, our concerns with respect to the Mission's non-compliance with the requirements of subsection 149.1(1) of the Act have not been alleviated.

On the basis of our audit, we have concluded that the Hindu Mission of Mississauga (the Mission) provided funding in the amount of \$281,483 to non-qualified donees outside Canada, including \$84,604 to the Tamils Rehabilitation Organization (TRO) in Sri Lanka, an organization that formed part of the support network for the Liberation Tigers of Tamil Eelam (LTTE), a listed entity under the *Criminal Code of Canada*, and \$196,879 to the North and East Community Development Organization (NECDO), an organization we believe was affiliated with, and supported the projects of, the TRO. The Mission also issued donation receipts on behalf of an unregistered organization in Sri Lanka in the amount of \$5,050. The extenuating circumstances of the tsunami disaster and the fact that the payments in question appeared to have been outside the normal operations of the Mission were taken into account when we proposed the penalty and Compliance Agreement in lieu of proceeding with revocation action. The signing of the Compliance Agreement establishes that the Mission certifies that its resources will not be used to provide financial or any other means of support for the LTTE or the goal of Tamil independence or the creation of a Tamil state.

Appropriateness of Sanctions Proposed

Our letter dated August 16, 2011, makes clear that a registered charity is not meeting the definition of a charitable organization under the Act when it uses its resources to finance or sponsor the support network of an entity that engages in terrorist activities. On this basis and for the reasons elaborated in that letter, we do not accept your argument that "... the CRA's position with respect to the credibility of the agents used by the Charity is based on newspaper and other hearsay evidence". Nor do we accept your statement that "The organizations chosen to deliver relief services as agents for the Charity in the circumstances, we submit, were appropriate and defensible". For all of the reasons set out in our letter, it remains our view that, on a balance of probabilities, it is reasonable to conclude that the TRO formed part of the support network for the LTTE, that the Mission was aware of this affiliation, and that the Mission agreed to provide funding to the TRO in spite of that affiliation.

In its responsibility to maintain the integrity of the registration system for charities, the Canada Revenue Agency (CRA) must consider the appropriate regulatory response when such cases of non-compliance surface. Accordingly, in consideration of your client's representation and the extenuating circumstances previously mentioned, the CRA, in a balanced regulatory

response, has decided to forego revocation action and proceed with the imposition of a monetary penalty.

In this regard, we would also draw your attention to the following excerpts from the Final Report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (the Commission) on Resolving the Challenges of Terrorist Financing (Volume 5, Chapter VII):

7.8.2 Intermediate Sanctions

It is particularly helpful for the CRA to make full use of the “intermediate sanctions” now available to it (for example, monetary penalties or the suspension of a charity’s power to issue tax receipts for donations) to encourage charities to “clean house” by removing directors and trustees who may be involved in terrorist activities. Creative and robust use of intermediate sanctions can indirectly achieve some of the goals that are obtained in the United Kingdom through a charity commission.

Penalty Assessment

Consequently, for each of the reasons mentioned in our letter dated August 16, 2012, I wish to advise you that, pursuant to section 188.1 of the Act, I propose to assess a penalty to the Mission. The penalty assessed by the CRA is calculated as follows:

	Fiscal Period Ending May 31, 2005	Fiscal Period Ending May 31, 2006	Fiscal Period Ending May 31, 2009
Gifts made to non-qualified donees: - TRO in Sri Lanka - NECDO in Sri Lanka	\$ 84,604 \$ 60,000	\$136,879	
Third party receipting: - Gods Own Children Foundation			\$5,050
Total:	\$144,604	\$136,879	\$5,050
Applicable penalty in accordance with subsections 188.1(4) and 188.1(9) of the Act.	105%	105%	125%
Total Penalty Owing per subsections 188.1(4) and 188.1(9) of the Act.	\$151,834	\$143,723	\$6,312

In accordance with subsection 189(6.3) of the Act, the penalty may be paid to an eligible donee as defined in subsection 188(1.3). An eligible donee in respect of a particular charity is a **registered charity**:

1. of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
2. that is not subject to a suspension of tax-receipting privileges;
3. that has no unpaid liabilities under the *Income Tax Act* or the *Excise Tax Act*;
4. that has filed all its information returns; and
5. that is not subject to a security certificate under the *Charities Registration (Security Information) Act*.

The CRA requires the following documentation to confirm that the eligible donee received the penalty payment:

- a letter addressed to the Director, Review and Analysis Division (mail to address below), signed by an authorized representative of the eligible donee, confirming the penalty payment received and the amount paid; and
- a copy of either the cancelled cheque or evidence of a non-cash transfer.

Should you choose instead to make your payment to the CRA, please make the cheque payable to the Receiver General for Canada and mail it to:

Director
Review and Analysis Division
Charities Directorate
Canada Revenue Agency
320 Queen Street, 13th Floor
Ottawa ON K1A 0L5

Please note that in accordance with subsection 149.1(1.1) of the Act, the penalty payment made to an eligible donee shall not be deemed to be an amount expended on charitable activities nor a gift made to a qualified donee.

Failure to pay this penalty amount or make arrangements for payment will result in us reconsidering our decision not to proceed with the issuance of a Notice of Intention to Revoke the registration of the Mission in the manner described in subsection 168(1) of the Act.

If you have any questions or require further information or clarification regarding the penalty payment, please contact [REDACTED] at [REDACTED]

Appeal Process:

Should you wish to appeal this Notice of Penalty in accordance with subsection 165(1) of the Act respectively, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed **within 90 days** from the mailing of this letter. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

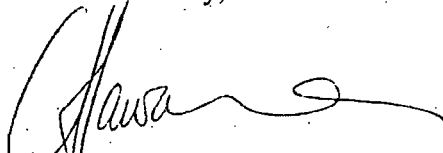
Public Notice:

By virtue of paragraph 241(3.2)(g) of the Act, the following information relating to the Mission's penalty will be posted on the Charities Directorate website:

Name of Organization:	Hindu Mission of Mississauga
Registration Number:	88623 2198 RR0001
Effective date of Penalty:	April 23, 2012
Reason for Penalty:	Undue benefits to non-qualified donees and issuing donation receipts intended for an unregistered organization
Act Reference:	188.1(4), 188.1(9), 149.1(1)
Amount of Penalty:	\$301,869

I trust the foregoing fully explains our position.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- Notice of Assessment
- CRA letters dated December 10, 2009, August 16, 2011 (less enclosure), and December 21, 2011
- Mission's response dated October 28, 2011
- Copy of the signed Compliance Agreement

cc: Mr. M. Sasitharan
Treasurer
Hindu Mission of Mississauga
1808 Drew Road
Mississauga, ON L5S 1J6

NOTICE OF ASSESSMENT - AVIS DE COTISATION

Date of mailing - Date de l'envoi April 23, 2012	Business Number - Numéro d'entreprise 88623 2198 RR0001	Taxation years - Années d'imposition 2005, 2006, and 2009
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NAME OF ORGANIZATION - NOM DE L'ORGANISME

HINDU MISSION OF MISSISSAUGA

Penalty amount \$301,869	Amount paid \$0	Balance owing \$301,869
Montant de la pénalité	Montant payé	Solde dû

Explanation of assessment - explication de la cotisation

Penalty assessed in accordance with subsections 188.1(4) and (9) for making a gift to an entity other than a qualified donee and for receipting on behalf of a third party. The penalty amount of \$301,869 represents: \$295,557 (105 per cent of \$281,483) for gifts provided to non-qualified donees outside Canada; and \$6,312 (125 per cent of \$5,050) for issuing receipts on behalf of, or in the name of, another person.

Linda Lizotte-MacPherson
Commissioner of Revenue
Commissaire du revenu

Canada



Canada Revenue
Agency

Agence du revenu
du Canada

Mr. M. Sasitharan
Treasurer
Hindu Mission of Mississauga
1808 Drew Road
Mississauga, ON L5S1J6

REGISTERED MAIL

December 10, 2009

File No: 1008572
BN: 88623 2198 RR0001

Dear Mr. Sasitharan:

Re: Audit of Registered Charity: Hindu Mission of Mississauga
Business Number: 886232198 RR0001

This letter is further to the field audit of the **Hindu Mission of Mississauga** (the "Mission") conducted by the Canada Revenue Agency ("CRA") commencing February 26, 2008. The CRA audit related to the operations of the Mission for the period June 1, 2004 to May 31, 2006; later events up to the date of the audit were also reviewed.

The CRA audit identified specific areas of serious non-compliance with core requirements of the *Income Tax Act* ("the Act") and its Regulations for maintaining charitable status.

1. Maintaining Charitable Status

In order for a registered charity to retain its registration, it is required to comply with the provisions of the Act applicable to registered charities. If these provisions are not complied with by a particular registered charity, the Minister of National Revenue ("the Minister") may revoke its registration in the manner described in section 168(2) of the Act.

The provisions of the Act concerning registered charities were enacted to ensure that the privilege of charitable status and the right to issue official donation receipts for tax purposes are available only to those organizations that meet the requirements of the registration process and otherwise continue to satisfy the requirements of charitable status. CRA's role is to ensure that charities are complying with the Act and devoting their resources exclusively to charitable purposes. CRA performs this role by monitoring the operations of charities to ensure continued compliance with registration requirements.

Audit is an important element of this process. A CRA charity audit is not limited to examining a charity's financial books and records. The audit will also review the charity's activities, as well as any evidence that might indicate whether or not a charity is satisfying its legal obligations under the Act.

Revocation of registered status pursuant to section 168(1) of the Act may take place in serious cases of non-compliance, such as breach of the core requirements of the Act, previous record of serious non-compliance, and non-charitable activities.

2. Opportunity to Respond to CRA's Concerns

The balance of this letter describes the areas of non-compliance identified during the field audit and in-depth review of the Mission's file as they relate to the legislative provisions applicable to registered charities, in order to provide you with an opportunity to respond to our concerns, provide any additional information regarding the issues outlined in this letter, and submit your written representations as to why the Mission's charitable registered status should not be revoked. The non-compliance issues are presented in order of significance.

3. Activities and Gifts to Non-Qualified Donees

The Act permits a registered charity designated as a charitable organization to carry out its charitable purposes, both inside and outside Canada, in the following manner:

- It can carry on its own activities. Unless donations received are transferred to qualified donees, money and property donated to a charitable organization must be used by the organization itself in the conduct of its own activities.¹
- Except where a charity gifts its funds to a qualified donee, CRA requires a charity to show that it effectively directs and actually controls the use of its resources on an ongoing basis.
- As part of carrying out its charitable purpose, a charity can make gifts to other organizations defined as qualified donees in sections 110.1, 118.1 and 149.1(1) of the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies, and a few foreign charities.

A charitable organization cannot act as an intermediary providing tax receipts to donors for amounts that are to be transferred to other organizations that are not qualified donees. In other words, a registered charitable organization may not act as a channel or conduit through which tax receipts are provided for donations that are intended for the use of another organization. This is true even if the charity believes that an individual or organization receiving the charity's funds will devote those resources to efforts that are *bona fide* and in line with the charity's own objectives. When a registered charity merely transfers its resources to another entity that is not a qualified donee, and fails to maintain effective direction and actual

¹ See the Federal Court of Appeal decisions on *Canadian Committee for the Tel Aviv Foundation v. Canada*, 2002 FCA 72 (CanLII) and *Bayit Lepletot v. Canada (Minister of National Revenue)*, 2006 FCA 128 (CanLII). Accessed on 2009-08-28.

control over those resources, the charity has, in effect, made a gift to a non-qualified donee. This contravenes the purpose and intent of the charitable registration provisions of the Act.

4. Audit Observations

The audit has raised serious concerns with respect to the Mission's expenditures outside Canada:

- The audit found that significant portions of the Mission's resources were distributed to and through non-qualified donees within and outside Canada. The Mission made gifts in 2004, 2005, and 2006 to the non-qualified donees listed below:
 - Tamils Rehabilitation Organization Sri Lanka ("TRO"), both directly and through an intermediary, TRO Canada.
 - North and East Community Development Organization ("NECDO") (Sri Lanka).
- As explained later in this letter, it is CRA's view, on a balance of probabilities, that it is logical and reasonable to assume that TRO Canada was established in order to support the goals and operations of its parent organization, the TRO, and that TRO Canada and the TRO operate within the overall structure of the Liberation Tigers of Tamil Eelam ("LTTE"), which is a listed terrorist entity.
- It appears that the Mission did not maintain direction and control over the expenditure of its funds outside Canada.
- The Mission was unable to demonstrate that the transferred funds were used for its own charitable activities.
- In addition, it appears that: the Mission may have undertaken activities which do not fall within the statement of activities approved at the time of its registration; the Mission's official donation receipts do not include all of the necessary information; the Mission did not maintain adequate books and records; and the Mission failed to properly complete the Registered Charity Information Return (Form T3010) in four consecutive years.

Further details regarding these areas of concern are set out below.

a) Funding of Non-Qualified Donees

Section 149.1(1) of the Act requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself." Alternatively, the Act allows a charitable organization to apply its resources by making disbursements, not exceeding 50 per cent of its income for any given year, to qualified donees.² CRA records indicate that,

² The term "qualified donee" includes only those entities defined in section 149.1(1) of the Act and described in sections 110.1(1) and 118.1(1) of the Act. The largest category of qualified donees comprises other Canadian registered charities.

at the time of registration, the Mission was provided with a document entitled "Information on the Income Tax Act and Registered Charities", to assist in complying with the operational and filing requirements that must be satisfied in order to maintain registered charity status. This document explains these requirements, including the definition of "qualified donee".

The Mission made payments, as set out below, to the TRO, both directly and through TRO Canada, and to NECDO.

<u>Date</u>	<u>Recipient</u>	<u>Intermediary</u>	<u>Method</u>	<u>Amount</u>
2004-12-27	TRO	TRO Canada	Cheque	\$ 5,000.00
2005-03-26	TRO		Wire Transfer	79,603.87
2005-05-20	NECDO		Wire Transfer	60,000.00
				<u>139,603.87</u>
2006-01-19	NECDO		Wire Transfer	65,774.00
2006-05-11	NECDO		Wire Transfer	71,105.00
				<u>136,879.00</u>
				<u>281,482.87</u>

During the audit, the representatives of the Mission stated that they were unaware of the distinction between qualified donees and non-qualified donees; however, they were of the opinion that the documentation demonstrated that their disbursements were compliant with the requirements of their own activity through an agency relationship with NECDO and the TRO. None of the documents we have seen support the suggestion that any agency relationship was in existence between the Mission and either NECDO or the TRO. Furthermore, correspondence and documents reviewed during the CRA audit indicate that the TRO was the intended beneficiary of the payment through TRO Canada, and that the TRO may also be affiliated with NECDO, as explained later in this letter. The TRO, TRO Canada, and NECDO are not qualified donees, as defined above.

b) Making Resources Available To Organizations That Appear To Operate Within the Overall Structure of the LTTE – a Listed Entity

A serious concern stems from the Mission's decision to fund the TRO's tsunami relief operations in the North and East of Sri Lanka, rather than those of registered charities selected by the Government of Canada for its tsunami Matching Fund Program.

The Government of Canada reacted immediately to the need for aid for tsunami victims, including in Sri Lanka, through its Matching Fund Program³ for emergency relief donations by

Only three categories refer to foreign organizations. In this regard, a Canadian registered charity can donate money or property to the United Nations and its agencies, any university prescribed in Schedule VIII of the Regulations, or a foreign charity to which Her Majesty in Right of Canada (effectively the Government of Canada) has made a donation either during the Canadian charity's fiscal period, or the 12 months preceding the fiscal period. The CRA website lists qualified donees at <<http://www.cra-arc.gc.ca/tx/chrts/plcy/csp/csp-q01-eng.html>>. Accessed on 2009-08-28.

³ Online:

Canadians to 23 organizations, including many qualified donees. These approved organizations were selected as being organizations to which Canadians could donate with confidence and trust. The list of matching funding organizations did not include the TRO or TRO Canada.

During the audit, the representatives of the Mission stated that when the TRO was chosen and the funds were transferred, the TRO was a registered and respected charity with full society registration and status granted by the Sri Lankan authorities, as shown in the recommendation letter in the 2002 TRO Annual Report provided by the Mission. However, on the basis of the information we have examined, it is our view that, on a balance of probabilities, it is logical and reasonable to assume that TRO Canada was established in order to support the goals and operations of the parent organization, the TRO, and that the TRO network operated in support of the LTTE.

Numerous public reports indicate that the areas of Sri Lanka where the TRO operated during 2004, 2005 and 2006 were under the control of the LTTE, an entity listed for terrorist activity, at the time when funds were transferred⁴ and that monies given to the TRO for tsunami relief operations were not all used for that purpose.⁵

The LTTE is listed in Canada as a terrorist organization under both the *United Nations Suppression of Terrorism Regulations*⁶ and the *Criminal Code of Canada*.⁷ It has been an offence since November 7, 2001 for any person in Canada to knowingly provide or collect by any means, directly or indirectly, funds with the intention or in the knowledge that the funds are to be used by a listed person or entity. As required by Canadian law, on November 20, 2008, the list was reviewed and the LTTE remains on the list.⁸

<<http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/Eng/DBAD3248D0730C2E85257601005B80B5?OpenDocument>> and <<http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/eng/NAT-220134751-Q2Y>>. Accessed on 2009-10-07.

⁴ The U.S. Department of State annually releases Country Reports on Terrorism. The April 27, 2005 report indicates that the LTTE controlled most of the Northern and Eastern coastal areas of Sri Lanka during the period under review. Online: <<http://www.state.gov/s/c/rls/45394.htm>>. Accessed on 2009-10-07.

⁵ On May 4, 2009, the *National Post* reported that the Sri Lankan government had captured LTTE armaments worth about \$20 million in its recent offensive. Daya Master, a senior LTTE spokesperson who had recently surrendered to the Sri Lankan government said that funds sent from outside Sri Lanka for humanitarian aid and reconstruction after the 2004 tsunami were misappropriated and "utilized for military purposes rather than the welfare of the Tamil people", Stewart Bell, "\$20M in Tiger Weapons Seized", *National Post*, (May 4, 2009). Online: <<http://www.nationalpost.com/story.html?id=1562915>>. Accessed on 2009-10-07.

⁶ The LTTE was listed in the Schedule to the *United Nations Suppression of Terrorism Regulations*, SOR/2001-360 pursuant to the Regulations Amending the *United Nations Suppression of Terrorism Regulations* SOR/2001-492 on November 7, 2001. Online: <http://www.osfi-bsif.gc.ca/app/docrepository/1/eng/issues/terrorism/other/admcon01_e.pdf>. Accessed on 2009-10-07.

⁷ *Criminal Code*, R.S.C. 1985, c. C-46, s. 83.05. Online: <<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>>. The currently listed entities can be accessed online: <<http://www.publicsafety.gc.ca/prg/ns/le/cle-cn.asp>>. Accessed on 2009-10-07.

⁸ Pursuant to the *Regulations Establishing a List of Entities* under s. 83.05 (9) of the *Criminal Code of Canada*, the Minister of Public Safety and Emergency Preparedness must review the "List" and determine whether there are still reasonable grounds to believe that each [listed entity] has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity or is knowingly acting on behalf of, or at the direction of or in association with an entity that has knowingly carried out or attempted to carry out, participated in or facilitated a terrorist activity. The Minister must then make a recommendation to the Governor in Council that each entity listed as of July 23, 2008, remain listed. This recommendation was made by P.C. 2008-1778 on November 25, 2008 and the LTTE remains on the list; (see SI/2008-143 December 10, 2008: Order Recommending that Each Entity Listed as of July 23, 2008 in the *Regulations Establishing a List of Entities* Remain a Listed Entity).

The Government of Canada has made it very clear that it will not tolerate the abuse of the registration system for charities to provide any means of support to terrorism, and that the tax advantages of charitable registration should not be extended to an organization where its resources may, directly or indirectly, provide any means of support for, or benefit to, an organization that is listed under the *United Nations Suppression of Terrorism Regulations* and/or the *Criminal Code of Canada*.⁹

i) The Relationship Between TRO (Canada) and the TRO

At the date of this writing, there is no operational TRO website, nor is there one for TRO Canada. However, the TRO's website listed TRO Canada as an international branch in the most recent archive dated December 17, 2005.¹⁰ We also note with concern that a TRO publication entitled "Tamils Rehabilitation Organisation: Plan for the 'Road to Recovery'" states that the TRO "has overseas offices in 14 countries with access to Tamil Diaspora professionals and experts from host countries".¹¹ TRO Canada's own archived website¹² lists its head office as Kilinochchi, Sri Lanka. We also find it significant that TRO Canada's website duplicates the mission and aims statements of the TRO.¹³ The close nexus between the TRO and TRO Canada is further suggested by newspaper reports of the TRO approaching then Prime Minister Martin in support of TRO Canada's application for registered charitable status.¹⁴

ii) The Relationship Between NECDO and the TRO

Audit documentation indicates that NECDO was first recommended to the Mission on the basis of a commendation letter by the Bishop of Trincomalee-Batticaloa dated April 16, 2005 ("Bishop's letter"). The Bishop's letter is addressed not to the Mission, but to Disaster Relief Organization of Canada (an unknown entity) located at 1240 Ellesmere Road,

⁹ Charities Registration (Security Information) Act online at <<http://www.canlii.org/en/ca/laws/stat/sc-2001-c-41-s-113/latest/sc-2001-c-41-s-113.html>>. Also see the CRA website, Checklist For Charities On Avoiding Terrorist Abuse, online at <<http://www.cra-arc.gc.ca/tx/chrts/chcklists/vtb-eng.html>> and Charities In The International Context, online at <<http://www.cra-arc.gc.ca/tx/chrts/ntmtml-eng.html>>. Accessed on 2009-10-15.

¹⁰ Online: <<http://web.archive.org/web/20050206173017/www.troonline.org/en/?menu=contacts>>. The last archive listed is dated April 4, 2008. Accessed on 2009-10-07.

¹¹ Tamils Rehabilitation Organization, Disaster Management Unit, "Plan for the 'Road to Recovery'", (January 21, 2005), page 9.

¹² Online: <<http://web.archive.org/web/20050405054448/www.trocanada.com/contacts.htm>>. Accessed on 2009-10-08.

¹³ TRO Canada's website mission statement is to "provide much needed relief, rehabilitation and development for the people of the North-East of Sri Lanka." In addition, the stated aims are to:

- Provide short-term relief and long-term rehabilitation to the displaced and war affected Tamils in North-eastern Sri Lanka;
- Channel expertise and funds to promote economic development, uplifting the living conditions for the displaced Tamils in North-eastern Sri Lanka;
- Promote and seek international aid from nations and non-governmental organizations, for TRO's humanitarian operations in Sri Lanka;
- Canvas public and political opinion internationally, to highlight the plight of the displaced Tamils in North-eastern Sri Lanka.

TRO Canada's archived website: <<http://web.archive.org/web/20050405054047/www.trocanada.com/about.htm>>. The TRO's archived website: <<http://web.archive.org/web/20050204164918/www.troonline.org/en/?menu=about>>. Accessed on 2009-10-08.

¹⁴ Brian Laghi and Colin Freeze, "With the Rebel Tigers' Support, Tamils Lobby Martin on Charity", *Globe and Mail*, (January 18, 2005). See also Stewart Bell, "Charity Funding Terror: Sri Lanka", *National Post*, (November 20, 2008). Accessed on 2009-11-05.

Suite 201, Scarborough, Ontario. We note with concern that this address is adjacent to offices of the World Tamil Movement ("WTM"), an entity listed under the *Criminal Code of Canada* on June 13, 2008¹⁵ as being the leading front organization for the LTTE.

NECDO's letters acknowledging the Mission's gifts are primarily addressed not to the Mission but to the Sri Lanka Tamil Organization for North and East (another unknown entity). In discussions with the CRA auditor, Mission management stated that "Tamil Organization" may have meant the TRO since the TRO is often called Tamil Organization, and TRO was known in Sri Lanka as the "Tamil Organization" in the North East. Audit documentation indicates that both Disaster Relief Organization of Canada and Sri Lanka Tamil Organization for North and East may refer to the TRO or its committees for the coordination of tsunami relief, strongly suggesting an affiliation between NECDO and the TRO.

Additionally, the Bishop's letter advises that NECDO works with a number of other organizations, including North East Community Restoration and Development (NECORD). The TRO 2003 Annual Report, provided to us during our audit, also lists North-East Community Rehabilitation and Development (NECORD) (sic) as a project implementation partner. It appears that NECDO, through its relationship with NECORD, may be acting in support of TRO projects.

In this connection, we note the concerns expressed by the United States Department of the Treasury in its November 15, 2007 designation of the TRO under Executive Order 13224 as an organization that acts as a front for the LTTE. According to this document, the LTTE had recently "ordered international NGOs operating in its territory to provide all project funding through local NGOs which are managed collectively by the TRO. This arrangement allows the TRO to withdraw money from the local NGO accounts and to provide a portion of the relief funds to the LTTE".¹⁶

iii) The Relationship Between the TRO and the LTTE

As outlined in Appendix A, the consensus of numerous and diverse sources we have reviewed indicates that the TRO raises funds and otherwise operates in support of the LTTE.

Additionally, we note that a memorandum dated May 16, 2005 prepared by the Secretary of the Mission, V. Vijayasekar, for the President of the Mission, S. Achuthanpillai, reported that the officer in charge of the WTM in Canada, Mr. Reggie, had at an unspecified date requested S. Achuthanpillai not to provide funds to TRO Canada. WTM had "instructed the TRO Canada to work with the Canadian public only and not with the Tamil Canadians". Mr. Reggie (also believed to be known as K.P. Reji, Executive Director of the TRO) recommended that the Mission donate funds to two organizations: the Tamil (Sri Lanka) Refugee-Aid Society of Ottawa (the "Society" – a registered Canadian charity and a qualified donee as defined above) and the Social and Economic Development Organization For Tamils ("SEDOT" – not a qualified donee). (The Mission Board, in fact, decided to send the tsunami funds to the TRO.) This is very significant because it indicates that the WTM, which is now, as

¹⁵ Online: <<http://publicsafety.gc.ca/prg/ns/lc/cle-eng.aspx#wtm>>. Accessed on 2009-10-19.

¹⁶ Online: <<http://www.treas.gov.press/releases/hp683.htm>>. Accessed on 2009-10-15.

noted above, a listed entity because of its relationship to the LTTE, was exerting authority over TRO's fundraising activities in Canada.

We have taken note of your representation that the Letter of Acknowledgement from the Office of the Prime Minister of Sri Lanka commending TRO's relief operations dated December 19, 2003, one year prior to the tsunami disaster, indicates that the TRO is a bona fide Sri Lankan charity recognized by the Government of Sri Lanka. We also note that this letter was issued during a period of official ceasefire. Since then, the Government of Sri Lanka has frozen the TRO's assets, and in its own February 22, 2007 report entitled *CFA 2002-2007; 5 Years of Ceasefire – a Missed Opportunity*¹⁷, it is evident that the TRO does not enjoy a harmonious working relationship with the Government of Sri Lanka. In fact, the TRO report alleges that the Government of Sri Lanka's "marginalization and demonization of TRO" through such measures as freezing the TRO's assets and the restriction of its access to individuals residing in LTTE territory has essentially blocked that organization from carrying on any significant charitable and/or humanitarian activities.¹⁸

c) Direction and Control

In order to meet the definition of a charitable organization under section 149.1(1) of the Act, unless disbursements are made to qualified donees, a registered charity must devote all of its resources to charitable activities it carries on itself. It is CRA's view that the Mission has failed to clearly demonstrate that it maintained a level of direction, control and accountability over the use of its funds sufficient to show that its resources were used in the conduct of its own charitable activities. In particular, it is evident from our audit that, in relation to the Tsunami Disaster Relief Project, the Mission was seen as a source of funds to the TRO and NECDO and not the "principal" or guiding mind of the project.

Furthermore, based on the information provided to us, it appears that, in relation to the Tsunami Disaster Relief Project, the Mission operated essentially to put funds at the disposal of another entity, i.e., the TRO, either directly or through TRO Canada and NECDO, for activities conducted by that entity. Such an arrangement does not meet the definition of a charitable organization pursuant to section 149.1 of the Act. Moreover, in so doing, it is the CRA's view that the Mission has made its resources available to organizations operating in support of a listed entity, thereby failing to ensure that its resources would be devoted exclusively to charitable purposes and activities.

During the audit, the representatives of the Mission stated that they were unaware of the direction and control requirements, and case law, and suggested that the CRA should allow the Mission an opportunity to comply in the future. The document provided to the Mission at the time of registration (see item 4(a) above) made clear the requirement for a registered charity either to carry on its own charitable activities or to make gifts to qualified donees. It is the

¹⁷ "5 Years of Missed Opportunity", *Tamils Rehabilitation Organization*, CFA: 2002-2007, (February 22, 2007). Online: <http://tamilcanadian.com/eelam/docs/5_year_CFA.pdf>. Accessed on 2009-10-15.

¹⁸ *Ibid.* Moreover, the Report's emphasis on the TRO's management and control of projects relying on diaspora funding further supports our position that TRO Canada has little or no control over projects managed in Sri Lanka. See also "Overseas TROs to Provide Humanitarian Relief Assistance in the East," *TamilCanadian*, (April 13, 2007). Online: <<http://www.tamilcanadian.com/page.php?cat=387&id=4874>>. Accessed on 2009-10-15.

responsibility of registered charities to ensure that they are fully conversant and compliant with the requirements of operating a charitable organization.

d) Charitable Purpose and Activities

The Mission is registered as a charitable organization and, as such, is required to satisfy the definition of a "charitable organization" pursuant to section 149.1(1) of the Act. A "charitable organization" means an organization whereby all of its resources are devoted to charitable activities.

To qualify for, and maintain, registration as a charity under the Act, an organization must be established for charitable purposes and devote all of its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and, second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with the requirements of the Act. Charitable purposes are not defined in the Act and it is, therefore, necessary to refer, in this respect, to the principles of the common law governing charities. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be, or remain, registered as a charity.

As confirmed in the CRA's notification of registration, dated January 27, 1995, the Mission was registered on the understanding that it would not undertake any activities beyond those that were included in its application for registration, unless prior approval had been received from the CRA. Based upon our review of the file, it appears that the Mission's activities in relation to tsunami relief (quite apart from the fact that these involved the improper transfer of resources described above) do not fall within the statement of activities approved at the time of its registration. Furthermore, based upon our observations above concerning the funding of non-qualified donees, it is our view that not only has the Mission pursued activities beyond those reviewed at the time of its registration, but also that the Mission has operated for the unstated, yet collateral, non-charitable purpose of making its resources available to organizations operating in support of a listed terrorist entity.

e) Official Donation Receipts

The Regulations list the required contents of official donation receipts issued by a registered organization. These are explained in the CRA guidance on issuing receipts, online: <http://www.cra-arc.gc.ca/tx/chrts/dnrs/rcpts/1-eng.html>.

A review of the file revealed the following receipting improprieties:

- Regulation 3501(1) of the Act requires that every official donation receipt must show a statement that it is an official receipt for income tax purposes. This statement did not appear on the receipts issued by the Mission.
- Regulation 3501(1)(g) of the Act requires that the name and address of the donor including, in the case of an individual, his first name and initial, be listed on each

donation receipt issued. This information was incomplete on the receipts issued by the Mission.

- Regulation 3501(1)(j) requires that official donation receipts must show the CRA name and website. This information was not included on the receipts issued by the Mission.

Additionally, research conducted by the CRA indicates that the Mission may be funding projects for the Gods Own Children Foundation, a Sri Lankan organization.¹⁹ The purpose of the registration scheme for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts. A registered charity may only issue official donation receipts for gifts made to it for its own use. The integrity of the scheme is seriously breached when an unregistered organization arranges with a registered organization for the use of the registered organization's registration number to provide tax relief for donations that are not made to it. A registered charity may not issue receipts for gifts intended for another unregistered organization, or allow non-registered organizations to use its charitable registration number.

Pursuant to section 168(1)(d) of the Act, the Minister may revoke a charity's registration if it issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations.

f) Books and Records

Section 230(2) of the Act stipulates that a registered charity must keep adequate books and records at a Canadian address recorded with the Minister. This requirement allows the Minister to verify the donations to the charity for which a deduction or tax credit is available under the Act, and to examine the official donation receipts issued by the charity.

The audit indicated that the Mission failed to maintain adequate books and records. For example, in the 2004 taxation year, a T5 Statement of Investment Income was erroneously issued to a substitute priest in the amount of \$14,300 in place of a T4A Statement of Pension, Retirement, Annuity and Other Income. At the time of the audit, the Treasurer of the Mission stated that T4 slips would be issued in the future; however, the CRA has not received the paperwork showing a correction to the \$14,300 error, nor has the CRA received information concerning the initial T5 payment. A T4A slip must be completed if the total of all payments in the calendar year exceeds \$500. Furthermore, the details concerning the services provided by the substitute priest were not provided.

g) Registered Charity Information Return (T3010)

Pursuant to section 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return with the applicable schedules.

As noted on page 4 of Form T3010, it is a serious offence under the Act to provide false or deceptive information in the Registered Charity Information Return. Section 168(1)(c) of

¹⁹ Online: <http://www.gocspitalschools.com/special_appeal.htm>. Accessed on 2009-12-07.

the Act states that the Minister may revoke a charity's registration if it fails to file an information return as and when required. It is a charity's responsibility to ensure that the information that is provided in its return, schedules and statements is factual and complete in every respect. A charity is not meeting its requirement to file an information return if it fails to exercise due care with respect to ensuring the return's accuracy.

The Mission improperly completed the information returns for the fiscal periods ending May 31, 2005, 2006, 2007 and 2008. No foreign disbursements were reported on lines 2100 to 2140, although as noted at item 4(a) above, such disbursements were made in 2005 and 2006, and lines 5000 to 5040 were not completed in each of these years. Additionally, according to the Mission's 2005 and 2006 financial statements, significant amounts were disbursed to the Tsunami Disaster Relief Project in Sri Lanka (\$144,628 and \$138,362, respectively), but these sums were not included in the report of total expenditures on the Mission's information returns (line 5020).

5. Conclusion

On the basis of the audit findings discussed above, it is our preliminary view that there are sufficient grounds for revocation of the Mission's registration under section 168(1)(b) of the Act primarily because it has failed to comply with the requirements of the Act for its registration by funding non-qualified donees outside Canada and by failing to maintain direction and control over the use of its resources. It is also our view that, by putting its resources at the disposition of organizations operating in association with the LTTE, the Hindu Mission of Mississauga has acted contrary to Canadian law and public policy, thereby devoting its resources to purposes and activities that are not charitable under Canadian law. This is an additional ground for revocation of the Mission's registration.

Other areas of concern include the Mission's activities involving the disbursement of funds to the Tsunami Disaster Relief Project, which does not fall within the statement of activities approved at the time of registration, receipting improprieties involving official donation receipts, and incorrectly completed information returns.

The consequences to a registered charity of losing its registration include:

1. The loss of its tax exempt status as a registered charity which means that it would become a taxable entity under Part I of the Act unless, in the opinion of the Director of the applicable Tax Services Office, it qualifies as a non-profit organization as described in section 149(1)(l) of the Act;
2. Loss of the right to issue official donation receipts for income tax purposes which means that gifts made to it would not be allowable as a tax credit to individual donors as provided at section 118.1(3) of the Act, or as a deduction allowable to corporate donors under section 110.1(1)(a) of the Act; and
3. The possibility of a tax payable under Part V, section 188(1) of the Act.

If you do not agree with the information and concerns outlined above, or if you wish to present any reasons why the Minister of National Revenue should not revoke the registration of the Mission in accordance with section 168(2) of the Act, you are invited to submit your representations **within 30 days from the date of this letter.**

Subsequent to this date, the Director General of the Charities Directorate will decide whether or not to proceed with the issuance of a Notice of Intention to Revoke the registration of the Mission in the manner described in section 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us. If you have any questions or require further information or clarification, please do not hesitate to contact us at [REDACTED]

Yours sincerely,

[REDACTED]

[REDACTED]

Charities Directorate
Place de Ville, Tower A
320 Queen Street W.
Ottawa ON K1A 0L5

Enclosure

APPENDIX A

The following sources indicate that the TRO raises funds and otherwise operates in support of the LTTE. The CRA also notes that on November 15, 2007, the United States Department of the Treasury named the TRO a "Specially Designated Global Terrorist" under Executive Order 13224 on the basis that it acts as a front to facilitate fundraising and procurement for the LTTE.²⁰

Significant 2009 Events

Four men pleaded guilty in New York to terrorism charges in June 2009 in relation to their involvement in a LTTE support network that operated in the United States and Canada. The indictment included a statement by one of those convicted, Vijayshanthar Patpanathan, to an undercover agent that the LTTE raised millions of dollars in North America, funneled through the TRO.²¹

"Lawrence Thilakar, also known as Lawrence Christy (planning director of the TRO)", is included in a list of LTTE political leaders and senior administrative officers being held by the Sri Lankan government in August 2009.²²

We also note that Lawrence Christy, describing himself as the head of field office, 'safe zone', in Mullivaikal, Mullaitivu, addressed a TRO appeal to world leaders on April 26, 2009.²³

Immigration and Refugee Board of Canada

A November 19, 2001 ruling of the Immigration and Refugee Board of Canada ("IRB")²⁴ states that there was "reliable evidence from three sources that affirm or strongly suggest" that:

- The TRO is the rehabilitation wing of the LTTE; the funds it collects are used for both rehabilitation and weapons procurement.
- It is part of the LTTE modus operandi to siphon off funds that are intended for rehabilitation programs in Sri Lanka.

²⁰ *Supra*, note 16.

²¹ Stewart Bell and Adrian Humphreys, "Four Guilty of Tamil Tiger Terror Charges", *National Post*, (June 10, 2009). Online: <<http://www.nationalpost.com/news/canada/story.html?id=1680626>>. Accessed on 2009-10-26.

²² "Act Against the Torture and Executions in Sri Lanka", Human Rights.de, Germany, (August 25, 2009). Online: <http://www.sangam.org/2009/08/Torture_Executions.php?uid=3655>. Accessed on 2009-09-28.

²³ "TRO Appeal To Security Council and India", (April 26, 2009). Online: <http://www.sangam.org/2009/04/TRO_Appeal.php?uid=3438>. Accessed on 2009-10-16.

²⁴ Online: <http://www2.irb-cisr.gc.ca/en/decisions/reflex/index_e.htm?action=issue,view&id=181>, (Issue 181 - February 7, 2002). Accessed on 2009-10-16.

- The IRB further found, on the balance of probabilities, “that the TRO in Sri Lanka was under the direct influence of the LTTE and, therefore, not able to control the use of funds sent to it from overseas groups.”

Charity Commission of England and Wales Inquiry into the TRO

On the basis of allegations that the TRO raises funds for the LTTE, Lord Avebury, the Vice-Chairman of the U.K. Parliamentary Human Rights Group, filed a complaint to the Charity Commission.²⁵ Subsequently, the Commission de-registered the TRO (UK) and released the results of the formal inquiry into the activities of the TRO branch based in London.²⁶ The Commission found evidence that:

... trustees exercised little or no control over the application of funds in Sri Lanka and failed to demonstrate a clear audit trail relating to expenditure. They also failed to provide the Commission with any explanation as to the provenance of some of the funds received from the US and Canada.

A review of the systems operated by the TRO, undertaken on behalf of the Interim Manager of the TRO (UK) appointed by the Commission, suggested that:

... the TRO SL [Sri Lanka] liaised with LTTE in determining where funds could be applied. It also found that once funds had been received by TRO SL, they were used for a variety of projects which appeared to be generally humanitarian, but not necessarily charitable in English law nor in line with the Charity's objects. [emphasis added]

Human Rights Watch ("HRW") – Funding the "Final War" – LTTE Intimidation and Extortion in the Tamil Diaspora

The following are excerpts from a 2006 HRW report on the LTTE's “aggressive and systematic campaign in Canada and parts of Europe to raise funds for the ‘final war’ between the Tamil Tigers and the Sri Lankan government”:²⁷

²⁵ Tanuja Solanki, “UK probe into Tamil charity”, *BBC News*, (November 2, 2000) – online: <http://news.bbc.co.uk/2/hi/south_asia/1003683.stm> and Fran Abrams, “Charities watchdog in raid on Tamil agency”, *The Independent*, (October 29, 2000) – online: <<http://license.icopyright.net/user/viewFreeUse.act?uid=NTQ5MzQ0MA%3D%3D>>. Accessed on 2009-10-23.

²⁶ The Charity Commission of England and Wales conducted an Inquiry under s. 8 of the *Charities Act*, 1993, to, among other things, “investigate the allegations that the Charity [TRO UK] was providing financial support to the LTTE.” “... the results of the review suggested that the TRO SL liaised with the LTTE in determining where funds could be applied. It also found that once funds had been received by TRO SL, they were used for a variety of projects which appeared to be generally humanitarian, but not necessarily charitable in English law nor in line with the Charity's objects.” Online: <<http://www.charity-commission.gov.uk/investigations/inquiryreports/tamils.asp>>. Accessed on 2007-12-07. The TRO was subsequently removed from the Register of Charities on August 10, 2005. Online: <<http://www.charity-commission.gov.uk/ShowCharity/RegisterOfCharities/RemovedCharityMain.asp>>. Accessed on 2009-10-16.

²⁷ “Funding the ‘Final War’ – LTTE Intimidation and Extortion in the Tamil Diaspora”, *Human Rights Watch*, Vol. 18 No. 1 (C) released March 14, 2006, pages 10, 11, 21 and 34. Online: <<http://www.hrw.org/en/reports/2006/03/14/funding-final-war-0>>. Accessed on 2009-10-16.

As Tamils settled abroad, particularly in areas with high Tamil concentrations, such as Toronto or London, they established a range of Tamil institutions and organizations, including Tamil-owned businesses, media, religious temples and churches, and cultural, political, and service organizations, including agencies that help new arrivals to find housing or employment. To ensure both political and financial support, the LTTE sought – and gained – influence or control over many of these institutions. . .

. . . In most countries with a significant Tamil diaspora, Tamils established charitable organizations to raise funds for Tamil causes. These included the World Tamil Movement, British Tamil Association, and the **Tamil Rehabilitation Organization**, among others. Although the charities solicited funds to assist civilians affected by the war, numerous inquiries, including investigations by Canadian intelligence, have found that a significant amount of the funds raised were channelled to the LTTE for its military operations. . . [emphasis added]

The LTTE's influence is apparent in many Hindu temples in the West. Temples may display photographs of Prabhakaran, the LTTE leader, and sell LTTE flags, CDs of Prabhakaran's [sic] speeches, or videos and DVDs promoting the LTTE. The temples may also collect money for the Tamil Rehabilitation Organization or other LTTE front groups. . .

When asked about the World Tamil Movement's relationship to the LTTE [Sitha] Sittampalam [current President of the World Tamil Movement in Canada] told Human Rights Watch, "We are sympathetic to our cause there and because the LTTE is fighting for our rights and in the vanguard we have also campaigned to help them". The organization's website prominently features quotes from the LTTE leader Vellupillai Prabhakaran.²⁸ However, Sittampalam denies that the World Tamil Movement collects funds directly for the LTTE, or for any other organization. He told Human Rights Watch:

We don't raise funds, but we canvas and advise people to help our people there [in Sri Lanka] for rehabilitation from the war and tsunami. . . **We ask them to give it to the TRO (Tamil Rehabilitation Organization) or SEDAT [Social and Economic Development Association of Tamils].** Some give to the TRO branch here, or some give bank to bank transactions. . . [emphasis added]

²⁸ Vellupillai Prabhakaran and several of his senior commanders had been shot dead on May 18, 2009 while fleeing the war zone. Sally Sara, "Sri Lanka: War Over, Rebel Leader Dead", *ABC News*, (May 19, 2009). Online: <<http://www.abc.net.au/news/stories/2009/05/19/2574237.htm?section=world>>. Accessed on 2009-10-16.

We find it significant that the WTM, a front organization for the LTTE,²⁹ and a listed terrorist organization in Canada since June 13, 2008³⁰, canvasses for and advises people to donate to the TRO, and in the Mission's case, to SEDAT [also known as SEDOT], as noted in the Memorandum dated May 16, 2005 from the Mission's Secretary to its President.

LTTE support sites: News releases from LTTE's International Secretariat

The following excerpts from various LTTE news releases, while not directly admitting LTTE control over the TRO, further suggest close ties between the two organizations:

Nutrition centres have been opened by the Tamils Rehabilitation Organization (TRO) in conjunction with the LTTE administration
...

The TRO in Skanthapuram is helping treat skin diseases in a free Ayurvedic medical centre...The clinic was set up by TRO with the active participation of the LTTE's administration.³¹

CALL FOR SELF-SUFFICIENCY DRIVE BY LTTE AND TRO

At a TRO-organised prize-giving for Tamil farmers in Puthukudiyiruppu (Vanni), TRO's head Mr. Ravi stated to the audience of cultivators that they must cultivate their soil with the same vigour they are showing in war. He went on, "The enemy is trying to humble us with starvation. We can win only by producing our own food." Mr. Ravi said the TRO was here to help steer such a food production drive. His powerful speech was matched by LTTE representative Mr. Balakumaran who said the Tamil struggle is "bound to the soil". He emphasised the need for Tamil Eelam to

²⁹ Our supplementary research has uncovered a variety of sources, which indicate that the WTM is actually an LTTE front organization. Examples include:

- The WTM has been described by the *New York Times* as "effectively the political arm of the Tigers in Canada" and that the "charity who receives much of its money, is the Tamil Rehabilitation Organization". (Somini Sengupta, "Canada's Tamils Work on a Homeland From Afar", *New York Times*, (July 16, 2000).
- The US State Department's annual report "Patterns of Global Terrorism" has, since 1994, specifically identified the WTM as a "known [LTTE] front organization". Online: <<http://www.state.gov/documents/organization/31946.pdf>>. Accessed on 2009-10-16.
- In the 1997 decision of the Federal Court of Canada (Re Suresh [1997] F.C.J. No. 1537 T.D.), Justice Teitelbaum, ruling on the reasonableness of a security certificate, stated that "it can reasonably be concluded [that WTM] is part of the LTTE organization or is, at the very least, an organization that strongly supports the activities of the LTTE. Further, the Court ordered Suresh to not have direct contact with...any executive members of WTM, or with any of the WTM's employees". Justice Teitelbaum confirmed this finding again in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 746 (CanLII), (June 13, 2003), at para. 16.

³⁰ The World Tamil Movement was listed in the *Regulations Establishing a List of Entities*, SOR/2002-284 pursuant to the *Regulations Amending the Regulations Establishing a List of Entities*, SOR/2008-214 on June 13, 2008, as the leading front organization for the LTTE in Canada. The various offices of the WTM in Canada transfer funds to bank accounts in Sri Lanka destined to support the terrorist activities of the LTTE. The leadership of the WTM acts at the direction of leaders of the LTTE. WTM representatives canvas areas in Canada with large Tamil populations demanding large donations on behalf of the LTTE. Refusals to contribute often lead to threats and intimidation.

³¹ LTTE Press Release, "News From Tamil Eelam", (April 2, 1997). Online: <http://www.eelam.com/freedom_struggle/lte_press_releases/1997/april/02.html>. Accessed on 2006-04-25.

³² LTTE Press Release, "News From Tamil Eelam", (September 3, 1997). Online: <http://www.eelam.com/freedom_struggle/lte_press_releases/1997/sept/03.2.html>. Accessed on 2006-04-25.

achieve self-sufficiency to combat the evil designs of the Sri Lankan government.³³

TamilNet

TamilNet³⁴ covered the 2004 opening of the TRO's fifth divisional office in the Trinco district:³⁵

Mr. S. Elilian, Trincomalee district political head of the Liberation Tigers of Tamil Eelam (LTTE) unveiled the name board of the TRO Eachchilampathu division office...Mr. Elilian said at the event that TRO would expand its activities to provide urgent needs to the war affected families in the district through its divisional offices. **"TRO currently provides assistance to the needy from the funds channelled through the LTTE on the instruction of our national leader". . . [emphasis added]**

Pro-LTTE Web sites

Staunchly pro-LTTE Web sites "EelamWeb"³⁶ and "Tamil Ealam"³⁷ prominently display hypertext links to the TRO.

LTTE Supporters

In "British Charities Fund Terrorists,"³⁸ Dushy Ranetunge reports that the LTTE, "[try] to create a perception that the TRO is separate and independent of [it] in order to raise funds". In light of this statement, we also find it significant that certain alleged LTTE activists appear to have openly admitted LTTE control over the TRO:

In the above-noted report, Ranetunge adds:

Leading LTTE activists in the UK, writing in pro-LTTE magazines have admitted that the Tamil Rehabilitation Organisation (TRO) and several other "charities" are the "brain child" of the LTTE leader V Prabhakaran, who is wanted in India for the assassination of India's former Prime Minister Rajiv Gandhi.

³³ LTTE Press Release, "News from Tamil Eelam", (August 29, 1997). Online:

<http://www.eelam.com/freedom_struggle/ltte_press_releases/1997/august/29.html>. Accessed on 2006-04-25.

³⁴ TamilNet is a news and feature service that provides information on issues concerning the Tamil People and the developments within the northeastern parts of Sri Lanka.

• We find it noteworthy that the launch of TamilNet originally advertised for journalists who "most importantly...support Tamil's struggle for self-determination". Online:

<<http://www.web.archive.org/19970404180520/http://www.tamilnet.com/>>. Accessed on 2006-05-01.

• TamilNet is also listed as a resource online at <<http://www.eelamweb.com>>, the staunchly pro-LTTE website.

³⁵ "TRO Opens its fifth divisional office in Trinco district", *TamilNet*, (November 3, 2004). Online:

<<http://www.tamilnet.com/art.html?catid=13&artid=13304>>. Accessed on 2006-02-08.

³⁶ Online: <<http://web.archive.org/web/20071024141206/http://www.eelamweb.com>>. Accessed on 2009-10-26.

³⁷ Online: <<http://web.archive.org/web/20080822022256/http://www.eelam.com>>. Accessed on 2009-10-16.

³⁸ Online: <<http://www.island.lk/2000/10/07/news02.html>>. Accessed on 2009-10-26.

The Canadian branch of the Tamil Rehabilitation Organization (TRO) operates out of the same offices as the Tamil Eelam Society of Canada (TESOC), 861 Broadview Avenue, Toronto M4K 2P9, Ontario and is headed by Mr E Gunanathan a well known LTTE activist in Canada.

Charles Somasundrum who works as a volunteer several days a week at Eelam House, 202 Long Lane, London SE1 4QB, the LTTE HQ in London, has stated in "Hot Spring" July 1997 issue, page 20, "Prabhakaran has proved himself to be not only a brilliant military tactician but also an equally brilliant and humane administrator. This is borne out by some of the organisations he has established for the citizens of Eelam like "Chencholai" (an organisation for the care of war orphans), TEEDOR (an organisation for economic development of Eelam) and the TRO (an organisation for the rebuilding of war scorched Eelam and the rehabilitation of its citizens).

Rev. Dr. S.J. Emmanuel,³⁹ described by Rohan Gunaratna as "a key figure in the LTTE international network"⁴⁰ appears to have candidly admitted LTTE control over the TRO by stating:

It is to the credit of the LTTE that within two days their Tamil Rehabilitation Organization (TRO) ... set up a network of services to cater to the very minimum needs of such a massive population.⁴¹

While the above excerpts are by no means exhaustive, they offer a sample of evidence that strongly suggests close and long-established ties between the TRO and the LTTE.

³⁹ In an undated article, "Boys and Girls Come Out to Play", in the U.K. newspaper, *The Independent*, Rev. Emmanuel, the former Vicar General of Jaffna, is alleged to have been quoted as comparing the LTTE leader Velupillai Prabhakaran to Jesus Christ and further describing Prabhakaran as 'a freedom fighter who has given the leadership to a movement committed to setting up the homeland to Tamil Eelam so that oppressed Tamil people could be saved from the chauvinist Sinhala regime'. Online: <<http://www.infolanka.com/org/diary/2.html>>. Accessed on 2009-10-26. Rev. Emmanuel's active presence at a pro-LTTE rally held February 1, 1998 in London, England was reported on the TamilNet website. Emmanuel was reported to have condemned the Sri Lankan government's war in the Tamil areas as unjust and called for a peaceful resolution to the conflict. Online: <<http://www.tamilnet.com/art.html?catid=138&artid=834>>. Accessed on 2009-10-26.

On December 16, 2000, Emmanuel delivered a speech at a charity dinner held by TRO (UK) at Walthamstow Assembly Hall in London. The speech was decidedly pro-TRO ("...so long as there exists a discriminated and suffering Tamil people in Tamil Eelam and an expatriate Tamil community in strong solidarity with their suffering brethren, this organisation, the TRO, is bound to stay and will only grow from strength to strength") and pro-Tamil Eelam ("Despite the racist efforts of Sri Lanka to chase the Tamils away from their homelands, a new Tamil nation rooted in Tamil Eelam and spread across the world is bound to bloom").

Online: <http://www.sangam.org/ANALYSIS/Emmanuel12_00.htm>. Accessed on 2009-10-26.

⁴⁰ Rohan Gunaratna, "The South African Connection - LTTE infrastructure in South Africa". Online: <http://www.sinhaya.com/SA_connection.htm>. Accessed on 2009-10-19.

⁴¹ S. J. Emmanuel, "Indictment Against Sri Lanka - Sri Lanka's Genocidal War - '95 to '98". Online: <<http://www.tamilnation.org/indictment/genocide95/gen95026.htm>>. Accessed on 2009-10-26.

REGISTERED MAIL

Nesathurai & Luk LLP
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Munich Re Centre
390 Bay Street, Suite 802
Toronto, ON M5H 2Y2

Attention: Mr. Hari S. Nesathurai

BN: 886232198RR0001

File #: 1008572

August 16, 2011

Subject: Audit of the Hindu Mission of Mississauga

Dear Mr. Nesathurai:

This letter is further to the field audit of the Hindu Mission of Mississauga (the Mission) conducted by the Canada Revenue Agency (CRA) commencing on February 26, 2008, and responds to your letter of March 1, 2010. The audit related to the operations of the Mission for the period from June 1, 2004 to May 31, 2006; a review of the Mission's Registered Charity Information Returns (T3010) for 2007, 2008 and 2009 was also conducted.

In our Administrative Fairness Letter (AFL) dated December 10, 2009 (attached), the Mission was advised that the CRA had identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its Regulations and was invited to provide representations on these matters. The CRA granted the Mission two extensions of time in which to respond. We have considered all of the representations made in your letter dated March 1, 2010, as well as confirmed some of the corrective measures taken since the issuance of the AFL;¹ however, it remains our view that there are sufficient grounds for revocation of the Mission's registration under section 168 of the Act.

We note that your letter states that the Mission's "... primary function is the operation of a Hindu temple in Mississauga and, save and except a short period of time immediately after the Tsunami in southeast Asia, the Charity's primary object was the operation of the Hindu temple for its members" and "[t]he Charity has been willing and continues to act with the utmost fidelity ... is committed to the activities of the operation of the temple and for no further purposes."

¹ The CRA verified that the proper T4A Statement of Pension, Retirement, Annuity and Other Income slip was issued to a temporary priest for the 2004 taxation year by the Mission in the amount of \$14,300. This amendment was made in February 2010, well after the completion of the audit, and in response to CRA's December 10, 2009 letter.

After reviewing the representations provided by the Mission concerning the filing of T3010 returns, we were able to observe that lines 2100, 2110 and 2120 in the 2005 and 2006 returns had been corrected; however, lines 5000 to 5040 have not been amended.

In consideration of your representations, we are prepared to offer your client the terms of the attached Compliance Agreement, together with a proposal to impose a penalty in the amount of \$301,869, as an alternative to proceeding with revocation action. Any representations you wish to make as to why this penalty provision should not be applied against the Mission must be received by September 16, 2011. Unless the Mission also agrees at that time to the conditions outlined in the attached Compliance Agreement, we will consider whether to proceed with revocation action based on the following grounds:

AREAS OF NON-COMPLIANCE:		
	Issue	ITA Reference
1	<p>Ceased to comply with the requirements of the Act for its continued registration:</p> <ul style="list-style-type: none"> • Gifting to non-qualified donees/lack of direction and control over resources • Devotion of resources to non-charitable activities 	Subsection 149.1(1) and (2), subsection 188.1(4), and paragraph 168(1)(b).
2	<p>Issued a receipt for a gift or donation otherwise than in accordance with the Act and the Regulations:</p> <ul style="list-style-type: none"> • Receipting improprieties • Third party receipting 	Subsection 149.1(2), subsection 188.1(9), and paragraph 168(1)(d).

1) Gifting to Non-Qualified Donees/Lack of Direction and Control Over Resources

a) Audit Observations

The audit revealed that the Mission did not maintain direction and control over the expenditure of its funds outside Canada, was unable to provide the necessary documents to demonstrate that the transferred funds were used for its own charitable activities, and gifted to organizations that were non-qualified donees, as follows:

- \$84,604 to the Tamils Rehabilitation Organization in Sri Lanka (TRO Sri Lanka), directly and through an intermediary, TRO Canada; and
- \$196,879 to the North and East Community Development Organization (NECDO).

b) Mission's Representations

The Mission's representations focus on the belief that its objectives were accomplished with TRO and NECDO, as follows:

- the Mission represented that "... the TRO acted pursuant to an agency agreement with the Charity to carry out the Charity's objectives with respect to the

construction of a school for orphans in an area of Sri Lanka that was not receiving substantial aid from other relief agencies" and "...the project was completed and the Charity had significant documents in its files, including construction plans, progress reports and photographs showing the project at various stages of completion. The law of agency clearly does not require that an agency agreement be solely in writing but requires that there be evidence of a principal-agent relationship."

- the Mission stated that it "... had chosen NEDCO [NECDO] as its agent", and that "[t]he auditor's requirement of evidence of agency should have been satisfied by his review of the books and records. Once again, there can be no allegation that the project was not completed or the amount of funds allocated were not reasonable for such a housing project."

The Mission's representations do not satisfy the fundamental issue that these payments were made to non-qualified donees. The Mission did not provide additional documentation to alleviate the CRA's concerns regarding its lack of direction and control over the foreign projects it funded, or to demonstrate that the funds transferred were used in furtherance of its own activities.

c) CRA's Position

A registered charity is not permitted to make gifts to non-qualified donees. Subsection 149.1(1) of the Act requires that a registered charity operating as a charitable organization devote all of its resources to "charitable activities carried on by the organization itself." Subsection 149.1(6) provides that a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that in any taxation year it disburses not more than 50% of its income for that year to qualified donees.

Except where a charity gifts its funds to a qualified donee, the CRA requires it to show that it effectively directs and actually controls its own activities on an ongoing basis, including situations in which a charity carries out its activities through an intermediary such as an agent.² The Federal Court of Appeal has confirmed that a charity working with an intermediary must have control over the activities carried out on its behalf, and over the use of its resources.³ In particular, these cases highlight that the relevant issue to be determined in regard to this requirement is not only whether resources are being devoted to activities which the law regards as charitable, but whether funds transferred to a non-qualified donee are, in reality, devoted to activities being carried on by the charity itself. As noted in *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, "the Minister is entitled to insist on credible

² CRA Publication entitled "Canadian Registered Charities Carrying Out Activities Outside of Canada".
³ *The Canadian Committee for the Tel Aviv Foundation v. Canada* (2002 FCA 72), 2002-03-01, *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)* (2002 FCA 323) [hereinafter *CAMD*], 2002-09-13, and *Bayti Lepleta v. Canada (Minister of National Revenue)* (2006 FCA 128), 2006-03-28.

evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself."⁴

It is a matter of fact that neither TRO Sri Lanka nor NECDO is a qualified donee as that term is defined in the Act. A registered charity may use an intermediary to carry out its activities and your representations focus in this regard that an agency agreement between the Mission and TRO Sri Lanka was drawn up, and that NECDO acted as its agent. However, it is clear from the Federal Court of Appeal's decisions in *The Canadian Committee for the Tel Aviv Foundation v. Canada*, 2002 FCA 72, and *Bayit Lepletot v. Canada* (Minister of National Revenue), 2006 FCA 128, that an agency agreement is not sufficient to show that a registered charity is not acting as a conduit to funnel donations overseas in contravention of the Act requirements. A satisfactory agency relationship will not exist where funds are supplied by a registered charity for the operations of another organization, or where the registered charity does not have sufficient authority and control over an organization named as its agent to ensure that funds transferred are used appropriately.

While we acknowledge that there is no legal requirement to have an agency agreement in place prior to entering into a funding partnership with a third party, the charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities. As previously documented in our letter of December 10, 2009, the Mission's records did not establish its ongoing direction and control over the use of its resources, and it was unable to provide any written agency agreements and source documents to demonstrate direction and control. The Mission acted essentially to put funds at the disposal of TRO Sri Lanka and NECDO. Although the Mission was able to demonstrate that TRO Sri Lanka and NECDO received the funds sent to them, no evidence was made available to the CRA's auditors or has since been provided to establish the Mission's control over how those funds were spent.

When CRA notified the Mission that it was granted charitable status, it provided a copy of a document entitled "Information on the Income Tax Act and Registered Charities". This document advises that registered charities may operate outside Canada provided they carry on their own charitable activities and that they retain control over the activities carried on by the agent.

It, therefore, remains our position that Mission has ceased to comply with the requirements of the Act by gifting to non-qualified donees in contravention of subsection 149.1(1) of the Act, which stipulates that a charitable organization must devote its resources to charitable activities carried on by the organization itself. This constitutes sufficient reason to revoke the Mission's status as a registered charity under paragraph 168(1)(b) of the Act.

⁴ *Ibid.*

In these circumstances, subsection 188.1(4) of the Act also provides for the levying of a penalty based on the amounts provided to non-qualified donees. According to our audit findings, the Mission is liable to pay a penalty of \$295,557 as follows:⁵

a) 2005 Taxation Year: \$151,834:

TRO

2004-12-27: \$ 5,000

2005-03-26: 79,604

\$84,604 x 105% penalty = \$88,834

NECDO

2005-05-20: \$60,000 x 105% penalty = \$63,000

b) 2006 Taxation Year: \$143,723:

NECDO

2006-01-19: \$ 65,774

2006-05-11: 71,105

\$136,879 x 105% penalty = \$143,723

2) Devotion of Resources to Non-Charitable Activities by Making Resources Available To Organizations That Operate Within the Overall Structure of the Liberation Tigers of Tamil Eelam (the LTTE)

a) Audit Observations

The audit revealed that the Mission provided funding in the amount of \$84,604 both directly and indirectly (through TRO Canada) to TRO Sri Lanka, an organization that we have concluded operated in association with, and support of, the Liberation Tigers of Tamil Eelam (LTTE). Another \$196,879 was provided to NECDO which, for the reasons set out in our AFL we believe was affiliated with, and supported the projects of, TRO Sri Lanka.

As noted in our AFL, the LTTE is listed in Canada as a terrorist organization under both the *United Nations Suppression of Terrorism Regulations* and the *Criminal Code of Canada*. It has been an offence since November 7, 2001 for any person in Canada to knowingly provide or collect by any means, directly or indirectly, funds with the intention or in the knowledge that the funds, in whole or in part, are to be used by, or will benefit, the LTTE.⁶

⁵ Equal to 105% of the benefit amount, applicable to taxation years that begin after March 22, 2004.

⁶ Online: http://www.osfi-bsif.gc.ca/app/docrepository/1/eng/issues/terrorism/other/admcon01_e.pdf. Accessed on 2009-10-07.

b) Mission's Representations

Your letter asserts that:

- "The Charity has no ties to any terrorist or political group and continues to carry out its activities in accordance with its objectives."
- Regarding TRO, the Mission stated that "The Charity did conduct its own due diligence on the project and the organization based on the information available at that time prior to choosing this project and the TRO in order for the TRO to act as the Charity's agent in constructing the school. At all material times, the TRO was generally considered to be a registered NGO [non governmental organization] which was duly authorized by the Sri Lanka government and had been recognized by both the Sri Lankan and other foreign governments as a relief agency that provided humanitarian assistance to the Sri Lankan people."
- Concerning NECDO, the Mission represented that "The Charity had reviewed housing plans and had chosen NECDO as its agent only after completing its due diligence on the organization."

c) CRA's Position

Non-Charitable Purposes and Activities Contrary to Canadian Public Policy

Providing support to organizations operating in association with the LTTE is not charitable on two grounds. First, political objectives, including the achievement of nationhood or political autonomy for those of a particular ethnic or religious identity, are not recognized in the law as charitable purposes. In addition, it is well established that an organization will not be charitable in law if its activities are illegal or contrary to public policy.⁷ On both of these grounds, the use of a registered charity's resources to sustain the objectives and operations of the LTTE, either directly or indirectly through organizations that operate as its support network, is inappropriate.

It is well established at law that purposes that offend public policy are not charitable.⁸ Canadian public policy in the area of financing of terrorism is found in the preamble to the *Anti-terrorism Act*, in Part III of the *Criminal Code of Canada* and in the purposes and principles (section 2) of the *Charities Registration (Security of Information) Act*. These provisions recognize that depriving terrorist organizations of access to funds is a fundamental tool in undermining terrorist activities as it weakens their supporting logistical and social infrastructures.⁹ In this regard, it is very clear that

⁷ *Everywoman's Health Centre Society (1988) v Canada (Minister of National Revenue)* [hereinafter *Everywoman's Health Centre Society*] [1992] 2 FC 52 [hereinafter *Everywoman's Health Centre Society*] and *CAMDI*.

⁸ *Ibid.*

⁹ See Background: Terrorist Financing, Government of Canada's Air India Inquiry Action Plan in Response to the Commission of Inquiry into the Bombing of Air India Flight 182.

Online: <http://www.publicsafety.gc.ca/media/nr/2010/nr20101207-3-eng.aspx>. Accessed on 2011-08-05.

Canada's commitment to combating terrorism extends to preventing organizations with ties to terrorism from benefiting from the tax advantages of charitable registration.

Many of the policy and guidance statements for charities published on the CRA Internet web site call attention to the need to observe Canada's laws and public policy in this regard. For example, our publication entitled "CRA Guidance – Canadian Registered Charities Carrying Out Activities Outside of Canada" warns:

Charities have to remember their obligations under Canada's anti-terrorism legislation. As with all individuals and organizations in Canada, charities are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities, or that support terrorist activities.

While there is no express due diligence requirement under the Act, all registered charities are expected to take the necessary steps to ensure compliance with the requirements for registration. Due diligence measures are simply a matter of good governance practice that can, if conscientiously and genuinely implemented, serve to lessen the risk that a charity's resources will be used in a manner that could result in revocation of its registration. This would include ensuring that a charity does not operate in association with individuals or groups that are engaged in, or support, terrorist activities.

The Government of Canada regards the LTTE as a terrorist entity and has listed it as such, on April 8, 2006, under the provisions of the *Criminal Code of Canada* in accordance with UN Resolution 1373 (2001).¹⁰ Information pertaining to this listing posted on the Internet web site of the Department of Public Safety and Emergency Preparedness provides the following description for the basis of this listing:

Founded in 1976, the Liberation Tigers of Tamil Eelam (LTTE) is a Sri Lankan-based terrorist organization that seeks the creation of an independent homeland called "Tamil Eelam" for Sri Lanka's ethnic Tamil minority. Over the years, the LTTE has waged a violent secessionist campaign with the help of ground, air, and naval forces, as well as a dedicated suicide bomber wing. LTTE tactics have included full military operations, terror attacks against civilian centres, and political assassinations, such as the successful assassinations of Indian Prime Minister Rajiv Gandhi and Sri Lanka President Ranasinghe Premadasa. **The LTTE has also**

¹⁰ Resolution 1373 states, in part, "Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism... Decides that all States shall: (a) Prevent and suppress the financing of terrorist acts... 2. Decides also that all States shall: (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts... (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens..."

had an extensive network of fundraisers, political and propaganda officers, and arms procurers operating in Sri Lanka and within the Tamil diaspora. Although the LTTE was militarily defeated in May 2009, subversion, destabilization, and fundraising continue, particularly in the diaspora [emphasis added].

In addition, it would appear that the World Tamil Movement (WTM) held a certain amount of influence over the affairs of the Mission in that the WTM was able to meet with Mission President, Mr. Achuthanpillai, and provide direction as to how the funds should be disbursed in support of tsunami relief. For example, item 10 of the May 16, 2005 memorandum from Mr. Achuthanpillai to the secretary of the Mission stated that Mr. Achuthanpillai met privately with "Mr. Reggie from the World Tamil Movement (in charge in Canada)...they had a meeting at the President's house and had requested the President not to give the money to T.R.O. Canada, because they had instructed T.R.O. Canada to work with the Canadian Public only and not with the Tamil Canadians."

The Government of Canada listed the WTM as a terrorist entity on June 13, 2008. The Internet web site of the Department of Public Safety and Emergency Preparedness provides the following description of the WTM:

The World Tamil Movement was created in 1986 and became a known and leading front organization for the Liberation Tigers of Tamil Eelam (LTTE) in Canada. The leadership of the WTM acts at the direction of the LTTE and has been instrumental in fundraising in Canada on behalf of the LTTE. WTM representatives canvas for donations amongst the Canadian Tamil population, and have been involved in acts of intimidation and extortion to secure funds.

The representations provided by the Mission fail to change CRA's view that, on a plain reading of the facts, the monies sent to TRO Sri Lanka and NECDO were no longer administered under the Mission's direction and control. By disbursing funds to TRO Sri Lanka and NECDO, the Mission has made its resources available to organizations operating in support of a listed terrorist entity, thereby failing to ensure that its resources would be devoted exclusively to charitable purposes and activities.

The Mission maintains that the CRA's "... current position on the TRO ... has been supported by documentary evidence ... based on facts which were not available at the time the Charity was short listing projects together". The Mission also stated that, "[t]he Charity did conduct its own due diligence on the project and the organization based on the information available at that time prior to choosing this project and the TRO ..." and that it had "... chosen NEDCO [NECDO] as its agent only after completing its due diligence on the organization".

By extension, the Mission is requesting acceptance of the proposition that it could only have been aware of the TRO's association with the LTTE by reason of the information provided in CRA's letter dated December 10, 2009, or by the appearance of the TRO itself in terrorist listings. In particular, your letter claims that your client would not have been aware of the TRO network's affiliation with the LTTE prior to the actions of various governments to formally designate the TRO as a terrorist entity. In our view, this premise is faulty and, moreover, asks the CRA to ignore certain facts and evidence which lead one to believe that, on a balance of probabilities, the Mission is likely to have been fully aware of evidence pointing to the TRO's relationship to the LTTE.

As reflected below, it is our view that it is reasonable to believe that this information was, in fact, common knowledge within the Tamil community worldwide and in the Toronto area before the tsunami in December 2004 and the Mission's decision to send funds to TRO Sri Lanka. We note the following observations from a Human Rights Watch Report referenced in our AFL:¹¹

- "the largest numbers of Sri Lankan Tamils outside Sri Lanka are found in Canada and the vast majority of Canadian Tamils live in the Toronto area, creating a larger urban Tamil population than is found in any city in Sri Lanka itself";
- "As Tamils settled abroad, particularly in areas with high Tamil concentrations such as in Toronto...they established a range of Tamil institutions and organizations including... religious temples... and cultural, political and service organizations... To ensure both political and financial support, the LTTE sought – and gained – influence or control over many of these institutions. One Toronto Tamil remarked, 'Whatever is happening in the Tamil community, they make sure their agenda is there'";
- "The majority of Tamils are Hindu... The Toronto area has approximately forty Hindu temples attended by Sri Lankan Tamils... Because the temples provide both ready access to the Tamil community and to a potential source of funds, the LTTE has sought control over temple events, management, and revenue"; and
- "The LTTE's influence is apparent in many Hindu temples in the West. Temples may display photographs of Prabhakaran, the LTTE leader, and sell LTTE flags; CDs of Prabhakaran's speeches or videos and DVDs promoting the LTTE. The

¹¹ "Funding the 'Final War' – LTTE Intimidation and Extortion in the Tamil Diaspora", *Human Rights Watch*, Vol. 18 No. 1 (C) released March 14, 2006, pages 10, 11, 21 and 34.
Online: <http://www.hrw.org/en/reports/2006/03/14/funding-final-war-0>. Accessed on 2009-10-16.

temple may also collect funds for the Tamil Rehabilitation or other LTTE front groups.”

Our letter of December 10, 2009, provided a detailed summary of open source information that would have been available to the Mission, linking the TRO Sri Lanka to the LTTE. For example, an *LTTE Press Release* dated September 3, 1997 stated that a clinic in LTTE-run Vanni “... was set up by TRO with the active participation of the LTTE’s administration.”¹² Another *LTTE Press Release* stated that a TRO-organized self-sufficiency drive was assisted by an LTTE representative.¹³ An additional article appeared in the *TamilNet* stating that “... TRO currently provides assistance to the needy from the funds channelled through the LTTE on the instruction [of] our national leader.”¹⁴

Moreover, the Government of Canada’s concerns over the TRO network’s links to the LTTE would have been openly known for many years within the leadership of organizations and institutions within Toronto’s Tamil community. For example:

- on January 14, 1999, the Special Senate Committee on Security and Intelligence issued a report that identified charitable fundraising in Canada by international terrorist groups as a problem, and recommended changes to the Act. The *Toronto Star* reported:

“The Committee’s concern was that these charitable groups conduct enforced fundraising in the community,” says the consultant to that committee, Don Gracey, in an interview from Ottawa. “The Tamil Rehabilitation Organization was one group identified by the committee that, in fact, raised money for guns and materiel (sic) used by the Tamil Tigers”;¹⁵

- newspaper coverage of a fund-raising rally on the lawn of Queen’s Park sponsored by the World Tamil Movement¹⁶ (WTM) in June 2000 to mark

¹² “Free Clinic Treats Skin Disorders In LTTE-Run Vanni”, *LTTE Press Release*, (September 3, 1997).

Online: http://www.eelam.com/freedom_struggle/ltte_press_releases/1997/sep/03.2.html. Accessed on 2006-04-25.

¹³ “Call For Self-Sufficiency Drive By LTTE and TRO”, *LTTE Press Release*, (August 29, 1997).

Online: http://www.eelam.com/freedom_struggle/ltte_press_releases/1997/august/29.html. Accessed on 2006-04-25.

¹⁴ “TRO Opens Its Fifth Divisional Office In Trinco District”, *TamilNet*, (November 3, 2004).

Online: <http://www.tamilnet.com/print.html?artid=13304&catid=13>. Accessed on 2006-02-08.

¹⁵ Michael Swan, “Tamil War casts long shadow: Hindu, Buddhist, Anglican and Catholic Tamils still caught in homeland’s strife”, *Toronto Star*, (February 27, 1999).

Online: <http://tinet.bravehost.com/history/1999/his1999news065.html>. Accessed on 2011-08-08.

¹⁶ As your letter notes, the WTM was itself listed as a terrorist entity under the *Criminal Code of Canada* on June 13, 2008. The listing found on the Internet web site of Public Safety Canada at <http://www.publicsafety.gc.ca/prg/ns/le/ele-eng.aspx> contains the following information: “The World Tamil Movement was created in 1986 and became a known and leading front organization for the Liberation Tigers of Tamil Eelam (LTTE) in Canada. The leadership of the WTM acts at the direction of the LTTE and has been instrumental in fundraising in Canada on behalf of the LTTE. WTM representatives canvas for donations amongst the Canadian Tamil population, and have been involved in acts of intimidation and extortion to secure funds.” In this regard, we note that the Affidavit of RCMP Corporal Deanna Hill filed with the Federal Court of Canada in the matter of *Her Majesty the Queen and The World Tamil Movement of Ontario* seeking an order to restrain and

the success of the LTTE in capturing the strategic gateway to the northern Jaffna peninsula notes that "the charity [that] the World Tamil Movement say[s] receives much of its money, the Tamil Rehabilitation Organization, is itself controlled by the Tigers, according to officials with several independent non-governmental organizations in Sri Lanka";¹⁷

- a *National Post* article published on December 9, 2000 lists the TRO as one of eight organizations named in a CSIS [Canadian Security Intelligence Service] report as front organizations for the LTTE. The article states: "The Tigers have traditionally raised money through the use of front groups, such as the World Tamil Movement (WTM) and Tamil Rehabilitation Organization (TRO), which collect money for humanitarian purposes, the reports says. "However most funds raised under the banner of humanitarian organizations such as the TRO are channelled instead to fund the LTTE war effort:"¹⁸
- another *National Post* article, published on November 23, 2001, concerning a decision by the Department of Citizenship and Immigration not to renew funding to the Tamil Eelam Society of Canada, notes that a "CSIS report says the society has shared addresses in the past with not only FACT [Federation of Associations of Canadian Tamils], but also the World Tamil Movement (WTM), which a Federal Court judge has described as the Canadian arm of the Tamil Tigers. It has also shared an address with the Tamil Rehabilitation Organization (TRO)." The article goes on to say, "The TRO and WTM are both considered by CSIS to be actively engaged in fundraising for the Tamil Tigers guerrilla war effort in Sri Lanka. The money they raise in Canada is shipped to the LTTE's chief weapons purchaser in Thailand, CSIS claims."¹⁹
- again in June, 2002, the *National Post* reported: "A secret list of "LTTE front organizations in Canada" compiled by the Canadian intelligence service lists the WTM at the top, along with the Ellesmere Road address of the strip mall, as well as seven other non-profit associations in Toronto, Ottawa, Montreal and Vancouver: The Tamil Eelam Society of Canada, Tamil Rehabilitation Organization, Federation of Association of Canadian Tamils, Tamil Coordinating Committee, Eelam Tamil Association of

manage property of the WTM pursuant to sections 83.13(1)(b) and 83.13(2) of the *Criminal Code of Canada* states that donation receipt books seized from the WTM office included tickets or donation receipt books for various fundraising schemes, including the Tamil Rehabilitation Organization Relief Fund (para. 382 at page 233).

¹⁷ Somini Sengupta, "Feeding the Tamil Tigers: Fueling An Insurrection; Sri Lankans in Canada send millions to support rebels in their homeland but Ottawa is preparing to crack down on contributions to 'terrorist groups'", *Edmonton Journal*, (July 23, 2000), page E.4.

¹⁸ Stewart Bell, "Groups act as fronts for terror: CSIS; Tamils reject report, deny any part in covert operations", *National Post*, (December 9, 2000), page A.1.FRO.

¹⁹ Stewart Bell, "Ottawa won't renew funding of Tamil society: Panel gets final say: CSIS report named group as front for terrorist Tigers", *National Post*, (November 23, 2001), page A.2.

British Columbia, World Tamil Movement (Montreal chapter) and the Eelam Tamil Association of Quebec";²⁰

- a *Hamilton Spectator* article published on January 14, 2005 reported that a Hamilton medical centre backed out of a plan to donate medical supplies for tsunami relief to the Tamils Rehabilitation Organization after learning that it had been "named by the Canadian Security Intelligence Service as a front for the Liberation Tigers of Tamil Eelam";²¹ and
- a *Globe and Mail* report on January 18, 2005 documenting attempts being made at that time to influence then Prime Minister Paul Martin to have the TRO granted charitable status in Canada also referred to an independent report posted in 1999 on the Internet web site of the Canadian Security Intelligence Service describing the TRO as a front for the LTTE.

The Mission's representations fail to address the publicly available information linking the TRO to the LTTE or provide any reason why the Mission's Directors would not have been aware of, or able to access, such information.

In our view, it is not unreasonable to assume that there will be a certain lag time between knowledge of the existence of front groups operating for the benefit of a terrorist entity within a diaspora community most directly affected or involved, and the time when awareness of those links will come to wider public attention through court decisions, designation or listing actions taken by various jurisdictions, or from media reports or other publicly available sources. This does not mean that the CRA is precluded from relying upon such information in reaching a decision as to whether there are sufficient grounds to deny or revoke charitable status. The CRA's obligation in relying upon information from news reports and from the internet is to give an organization the opportunity to be heard in relation to that evidence.²²

The Government of Canada reacted to the need for aid for tsunami victims, including Sri Lanka, through its Matching Fund Program²³ for doubling emergency relief donations by Canadians to 23 organizations, including many qualified donees. These approved organizations were selected as being organizations to which Canadians could donate with confidence and trust. The Mission chose not to donate its funds to one of the 23 approved organizations which would have had the effect of doubling the value of those funds, and instead, passed the funds to the TRO Sri Lanka and NECDO, which, according to numerous public reports, operated in areas under the control of the LTTE when funds were transferred by the Mission. This could suggest that the Mission was more concerned with providing resources to these organizations than maximizing its support for tsunami relief.

²⁰ Stewart Bell, "Blood money on tap", *National Post*, (June 1, 2002), page B.1.FRO.

²¹ Daniel Nolan, "Medical donation postponed, Centre learns of Tamil group's terror links", *The Hamilton Spectator*, page A07.

²² *CAM/DL*.

²³ Online: <http://www.acdi-cida.gc.ca>. Accessed on 2011-08-10.

Political Realities in Sri Lanka

It is CRA's position that the Mission's decision-making process was very much influenced by political considerations. For example, the study by Shawn Teresa Flanigan, "Nonprofit Service Provision by Insurgent Organizations: The Cases of Hizballah and the Tamil Tigers" documented the LTTE's control over humanitarian aid projects through the TRO.²⁴ The study provides what is, in our view, an objective and very credible assessment of the relationship between the TRO and the LTTE and the role of the TRO in exerting control over humanitarian assistance in the north and east of Sri Lanka on behalf of the LTTE. The following observations, most particularly, provide important context for your statement that "At all material times, the TRO was generally considered to be a registered NGO which was duly authorized by the Sri Lanka government and had been recognized by both the Sri Lankan and other foreign governments as a relief agency that provided humanitarian assistance to the Sri Lankan people."

... Although the government in Colombo provides some financial support to schools, hospitals, and other parts of the bureaucracy in the LTTE provinces, the Sri Lankan government is reluctant to provide too much assistance to the area for fear of being perceived as overly supportive of Tamil separatists. The Tamil Tigers are equally interested in keeping government assistance out of their territories. As Philipson and Thangarajah (2005) noted, "The LTTE also has been very watchful of any attempt by the government to use rehabilitation and development programs as a means of further undermining the LTTE in both the North and the East" (32). Recognizing the power of service provision as a means of generating community support, the LTTE is eager not to give such an advantage to the Sri Lankan state. While the LTTE often tolerates the Sri Lankan government's activities in its regions, allowing the Sri Lankan government to provide too much aid in Tamil Tiger areas could undermine popular support for the organization.

The Tamil Tigers have realized that the people will be beholden to those that take care of them. In an effort to capture that community support, the Tamil Tigers have ensured that the communities in LTTE-controlled provinces perceive health and social services as coming from the LTTE itself. The LTTE has accomplished this goal through an elaborate effort to direct the service activities of the local and international NGO communities, create its own NGOs, and appoint steering committees to Sri Lankan government agencies that provide services. By creating this public image of a welfare "state," the LTTE ensures that the population under its control sees it as the primary provider of relief and rehabilitation.

... the Tamil Tigers meet the social service needs of the population in its territories by using the resources of the local and international NGO community. The LTTE makes use of these resources by "taxing" NGOs, by

²⁴ *Studies in Conflict & Terrorism*, (June 2008).

steering the activities of the NGO community to meet its needs, and through the work of its own NGO, the Tamil Relief Organization (TRO).

The LTTE is able to direct these humanitarian activities by requiring NGOs to conduct their work through the TRO and "local NGO" partners. By requiring NGOs to direct their resources and efforts through these entities, the LTTE can maintain a relatively high degree of control over how resources are used and what programs are implemented. It is in the Tamil Tiger's interest to exert control over the NGO sector and make the services appear as if they are coming from the LTTE itself, because this boosts the LTTE's legitimacy in the eyes of the Tamil community in the north and east. Some experts on Sri Lanka's NGO sector suggest that the LTTE actively uses development projects to gain public support from the community, and therefore uses the TRO and its services as a tool to ensure dependency on the LTTE for relief and rehabilitation services (Philipson and Thangarajah, 2005). Chandrakanthan (2000) noted that the LTTE's provision of various services and development of infrastructure has had the added benefit of causing Tamil youth to feel they are part of a distinct nation to which they should be loyal, which aids in generating genuine community support and reducing the LTTE's reliance on silencing and coercion.

The close relationship between the Tamil Tigers and the TRO is noted by scholars as well (Wayland, 2004). Some observe that the LTTE has appointed the eastern head of TRO as the LTTE's political chief for the east of the country, and cite this as an example of the unity of the two organizations (Philipson and Thangarajah, 2005). Some of the interview participants reported an explicit relationship between the LTTE and the TRO, stating that in the LTTE areas the TRO is known simply as "The Relief Organization" rather than the "Tamil Relief Organization," and is widely viewed by the local population as the LTTE's official social services arm. As one individual describes,

"They wouldn't like it if anybody says it, but yes, the TRO is the humanitarian arm of the LTTE. Basically they are the LTTE's social services department. That's one thing they do have. They have their own courts, they have their own police, they have their own army, and they have their own social service department, the TRO. Everything else, all the other departments are regular Sri Lankan government departments."

As Wayland (2004) noted, "Certainly, some or most of the TRO funds support legitimate relief efforts, but only those that are in keeping with the wishes of the LTTE leadership" (422). According to their financial report, the TRO is engaged in the construction of permanent and temporary

housing, education and early childhood services, water and sanitation projects, and health and medical relief, among other activities (TRO, 2005).

Whether an independent entity or an official arm of the LTTE, most interview participants described the TRO's activities as symbolic, and believe that the TRO primarily serves as a fund-raising mechanism for the LTTE. In fact, numerous scholars have noted the tremendous amount of resources the LTTE receives from the Tamil diaspora worldwide, and some cite the TRO and other organizations engaged in relief activities as a potentially important source of LTTE funding (La, 2004; Wayland, 2004).

A number of international aid agencies reportedly contract with the TRO in their development activities, and many interview participants suggested that the TRO inflates their prices far beyond those of other NGOs operating in Sri Lanka, and then funnels the excess funds to the LTTE. One NGO worker told the following story:

"Other than a few projects the TRO has no serious development activities, because to a fairly large extent the NGOs are also a way of making money for the LTTE. International agencies have to give money to them, and then they quote, well, for example toilets. We were building toilets for 17,000 rupees, that's almost \$200. The quote we got from the TRO was 35,000 rupees. Of course they have their own overhead, minimal, but they do. But everything else is just hidden here and there and then taxed out to the LTTE. The quality of what they provide isn't any better than the other NGOs, even though their prices are higher."

Particularly since the 2004 Asian tsunami, the TRO has played an important role in channeling aid from donor countries and international NGOs to LTTE-controlled areas (Hogg, 2006). As described earlier, NGOs have come under pressure to work with TRO in tsunami reconstruction activities, and there are reports that in some cases relief camps operated by other NGOs were taken over by force. There is a great deal of concern in the NGO community that, considering the current context of terror existing in the east of the country, the TRO slowly will gain the compliance of the majority of NGOs working in these areas as it seeks to bring all relief and development activities under its umbrella (Philipson and Thangarajah, 2005).

It remains our position that the Mission has ceased to comply with the requirements of the Act in contravention of subsection 149.1(1) that its resources be devoted to activities that are charitable by law, by making its resources available to an organization operating in association with, and in support of, a terrorist group. This constitutes sufficient reason to revoke the Mission's status as a registered charity under paragraph 168(1)(b) of the Act.

3) Receipting Improprieties and Third Party Receipting

a) Audit Observations

Receipting Improprieties

The audit revealed that the official donation receipts issued by the Mission did not fully comply with the requirements of Regulation 3501(1) of the Act, as follows:

- Regulation 3501(1) of the Act requires that every official donation receipt must show a statement that it is an official receipt for income tax purposes. This statement did not appear on the receipts issued by the Mission;
- Regulation 3501(1)(g) of the Act requires that the name and address of the donor including, in the case of an individual, his first name and initial, be listed on each donation receipt issued. This information was incomplete on the receipts issued by the Mission; and
- Regulation 3501(j) of the Act requires that official donation receipts must show the CRA name and Internet web site. This information was not included on the receipts issued by the Mission.

Third Party Receipting

Based on the 2009 T3010 return and information available in the public domain, it appears that the Mission issued donation receipts in the amount of \$5,050 on behalf of a foreign organization, the Gods Own Children Foundation in Sri Lanka (GOC).

According to information available in the public domain:

- "The GOC Canadian Chapter now works together with the Hindu Mission of Mississauga, an approved charity in Canada who jointly collects and sends money to GOC, Sri Lanka for the development of schools. As the Hindu Mission of Mississauga is an approved Canadian Charity, Donors in Canada can now donate to the GOC Fund, to the Hindu Mission of Mississauga, and obtain a Tax Receipt..."²⁵
- "... the Hindu Mission of Mississauga, as part of its ongoing Humanitarian Mission, has decided to support GODS OWN CHILDREN, to collect funds

²⁵ At the opening of the Canadian chapter of GOCF, June 2008 *GOC Newsletter*. Online: <http://www.godsovnchildren.com/pages/media/newsletters/english/JUNE-2008-GOC-NEWSLETTER.pdf>. Accessed on 2011-03-17.

on behalf of GOC and to remit 100% of the collected funds to GOC on a monthly basis. It will issue to (sic) Charitable Tax Receipts...²⁶

- The November-December 2008 *GOC Newsletter* stated that "The Hindu Mission of Mississauga provides us with all the funds collected monthly, which goes towards implementing a particular project. The GOC Foundation will provide the Hindu Mission of Mississauga with the necessary receipts and documentation for their accounts to be submitted to Revenue Canada."²⁷
- "... For the benefit of Overseas Donors: ... In Canada, we have an arrangement with a Canadian Government Approved Charity, who will collect funds on our behalf, and remit monthly. ... a Tax Receipt acceptable by Revenue Canada, would be issued by the Canadian Charity."²⁸

b) Mission's Representations

The Mission stated, "All the deficiencies noted by the auditor have been corrected by the Charity including the updating of the official donation receipts..."

The Mission's representations did not address or provide examples of remedial action relating to third party receipting. The Mission confirmed that it had made contributions "... to God of Children [GOC] in 2007 and 2008"; however this information is absent from the Mission's 2007 and 2008 T3010 returns.

c) CRA's Position

The purpose of the registration scheme for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts. The integrity of the scheme is seriously breached when an unregistered organization arranges with a registered charity for the use of the registered charity's registration number to provide tax relief for donations that are not made to it. A registered charity may not issue donation receipts for gifts intended for another unregistered organization, or allow a non-registered organization to use its charitable registration number.

Pursuant to paragraph 168(1)(d) of the Act, the Minister may revoke a charity's registration if it issues a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations or that contains false information.

²⁶ A July 2008 *Monsoon Journal* article adds credence to the fact that the Mission is acting as a conduit to issue donation receipts on behalf of another organization.

Online: http://www.monsoonjournal.com/ArticleFiles/Archives/Arch_on_1-Jul-2008/Archive_1-Jul-2008.pdf. Accessed on 2011-03-17.

²⁷ Online: <http://www.godsownchildren.com/pages/media/newsletters/english/GOC-NEWSLETTER-NOV-DEC-2008.pdf>. Accessed on 2011-03-17.

²⁸ The last reference to the Mission's role as a conduit appears in the March 2009 issue of the *GOC Newsletter*. Online: <http://www.godsownchildren.com/pages/media/newsletters/english/GOC-NEWSLETTER-MARCH-2009.pdf>. Accessed on 2011-03-17.

The CRA is unable to verify whether the receipting improprieties have been totally resolved, as no corrected samples were provided by the Mission. No representations as to corrective measures concerning third party receipting have been provided. Therefore, the CRA position remains unchanged. The Mission did not comply with the requirements of the Act and on these grounds is subject to revocation action under paragraph 168(1)(d) of the Act.

A registered charity that contravenes the receipting requirements of the Act by issuing receipts on behalf of, or in the name of, another person under subsection 188.1(9) is liable to pay a penalty equal to 125% of the eligible amount stated on the receipt as follows:

a) **2009 Taxation Year: \$5,303:**

Gods Own Children Foundation

2009-05-31: \$ 5,050 x 125% penalty = \$6,312

Compliance Agreement Option

As indicated above, the CRA has considered the Mission's statement that it "... is committed to the activities of the operation of the temple and for no further purposes." In the interests of preserving the temple for its members, the CRA is prepared to give the Mission the option to avoid revocation action by entering into a Compliance Agreement and, using the Mission's own words, to ensure that "... the Charity clearly focuses its activities on the operation of its temple ..." The Mission's Board must confirm in writing that it will implement the CRA's conditions to keep its registration by signing the attached Compliance Agreement, the terms of which it must agree to allow the CRA to make public.

If the Mission wishes to resolve these issues through the implementation of a Compliance Agreement, please sign and date the agreement and forward it to the undersigned at the address below by September 16, 2011.²⁹ The CRA will also require by that date any submissions your client wishes to make as to why it should not be assessed a penalty under subsection 188.1(4) and subsection 188.1(9) of the Act in the amount of \$301,869, based on amounts provided to non-qualified donees.

If no reply is received from the Mission by that date, or if the Mission does not agree to these terms, the CRA will consider whether to revoke the registration of the Mission by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.


²⁹ The CRA may also elect to impose sanctions whether or not the Mission agrees to sign the attached Compliance Agreement.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,



Charities Directorate

Telephone: 
Toll Free: 1-800-267-2384
Facsimile: 613-941-4401
Address: 320 Queen Street,
Place de Ville, Tower A,
Ottawa, ON K1A 0L5

Enclosures

- Compliance Agreement
- December 10, 2009 Administrative Fairness Letter

cc: Mr. M. Sasitharan
Treasurer
Hindu Mission of Mississauga
1808 Drew Road
Mississauga, ON L5S 1J6



REGISTERED MAIL

Nesathurai & Luk LLP
Barristers and Solicitors
Munich Re Centre
390 Bay Street, Suite 802
Toronto, ON M5H 2Y2

BN: 88623 2198 RR0001
File #: 1008572

Attention: Mr. Hari S. Nesathurai

Subject: Compliance Agreement for Hindu Mission of Mississauga

December 21, 2011

Dear Mr. Nesathurai:

We are writing in response to your letter of October 28, 2011, and to our conversation of December 5, 2011, regarding the possible use of the proposed Compliance Agreement with the Hindu Mission of Mississauga (the Mission).

As reflected in our publication Auditing Charities,¹ in more serious cases of non-compliance, the Charities Directorate may enter into a Compliance Agreement to correct the situation. A Compliance Agreement outlines the non-compliance issues, the remedial actions that the charity agrees to undertake to ensure compliance with the *Income Tax Act*, the timeline for the necessary changes to occur, and the consequences if the charity fails to abide by the terms of the agreement. The CRA may propose a Compliance Agreement where a charity was unaware of the legal requirement or thought it was meeting the requirement but made an error in the calculation or interpretation of the law.

After carefully considering your client's representation, on August 16, 2011, the CRA proposed to enter into a Compliance Agreement. In that letter, we offered your client the terms of the Compliance Agreement, together with a proposal to impose a penalty in the amount of \$301,869 as an alternative to proceeding with revocation action. Any representation your client wished to make was to be received by September 16, 2011. To accommodate your client, the CRA agreed to extend any representation to October 28, 2011.

¹ Online: <http://www.cra-arc.gc.ca/E/pub/tg/t4118/t4118-08e.pdf>.

In your response of October 28, 2011, you informed the CRA that your client has instructed you that they were in "agreement in principle" with the Compliance Agreement but indicated that: "As this is a settlement document, the Charity and its Board would like the CRA to confirm in writing, prior to the execution of the compliance agreement, that the agreement can only be used with respect to enforcing compliance and cannot be used in any other proceeding, appeal or matter as an admission of the truth of the contents of any allegation contain in the agreement."

In response to your request, we would like to inform you that when the CRA proposes a Compliance Agreement, it is, first and foremost, to ensure that a charity remains compliant with the Act if it is to maintain its registered status. As such, in the Mission's particular case, the use of the Compliance Agreement would be to ensure the Mission's future compliance with the Act. In addition, as afforded by the provisions of subsections 241(3.2) and (5) of the Act, it will also enable the CRA to protect the integrity of the registration system for charities and mitigate any risk of terrorist involvement in the Canadian charitable sector by making the information available to the public.

Accordingly, we would also draw your attention to the following excerpts from the Final Report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (the Commission) on Resolving the Challenges of Terrorist Financing (Volume 5, Chapter VII):

7.8.6 Publicity

The CRA should, when practicable, publish reasons for denying or revoking the registration of charities or [non-profit organizations] NPOs and for applying intermediate sanction to charities. Indeed, publicity will be an important factor if these sanctions are to influence charities and NPOs to reform themselves and to alert potential donors that a given organization supports terrorism. The Commission acknowledges the tradition of keeping income tax information confidential. These concerns are laudable, but the traditional protection of tax information from disclosure needs to be reconsidered in light of concerns about terrorism.

If the Mission wishes to resolve these issues through the implementation of a Compliance Agreement, please have the attached Compliance Agreement,² signed and dated, and return to the undersigned at the address below by January 20, 2012. The CRA is currently reviewing your client's submissions regarding the proposed penalty under subsections 188.1(4) and (9) of the Act in the amount of \$301,869.

If no reply is received from the Mission by that date, or if the Mission does not agree to the terms of the proposed agreement, the CRA will consider whether to revoke the registration of the Mission by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act. No further delays will be granted.

² Identical to the one sent to you on August 16, 2011.

Yours sincerely,

[Redacted Signature]

[Redacted Name]

Auditor

Charities Directorate

Telephone: [Redacted]

Toll Free: 1-800-267-2384

Facsimile: 613-941-4401

Address: 320 Queen Street,
Place de Ville, Tower A,
Ottawa, ON K1A 0L5

Enclosure

cc: Mr. M. Sasitharan
Treasurer
Hindu Mission of Mississauga
1808 Drew Road
Mississauga, ON L5S 1J6

COMPLIANCE AGREEMENT

Between:

HINDU MISSION OF MISSISSAUGA (the Mission)
1808 Drew Road
Mississauga, ON L5S 1J6
88623 2198 RR0001

And

THE CANADA REVENUE AGENCY (the CRA)

During the audit of the Mission's books and records conducted by the CRA covering the period from June 1, 2004 to May 31, 2006, and encompassing a review of the Mission's Registered Charity Information Returns (T3010) for the fiscal years ending 2007, 2008 and 2009, the following areas of non-compliance with the provisions of the *Income Tax Act* and/or its Regulations were identified. By signing this document, the Mission agrees that it will not promote, sponsor, fund, or otherwise allow its resources to be used to pursue non-charitable purposes and will take the following corrective measures to rectify the identified areas of non-compliance. It also consents to allow a copy of the entirety or any part of the terms of this Compliance Agreement to be made public.

1) Corrective Measures Concerning Devotion of Resources to Non-Charitable Purposes and Making Resources Available to Organizations that Operate within the Overall Structure of the LTTE

The Mission acknowledges that support for the creation of a Tamil State or any form of independent Tamil governance within Sri Lanka is a political objective that is not ancillary or incidental to the religious purposes for which the Mission has been registered as a charity and is, therefore, not an allowable use of its resources under the Act.

By signing this agreement, the Mission certifies that its resources will not be used to provide financial or any other means of support for the LTTE or the goal of Tamil independence or the creation of a Tamil state. This certification specifies that the Mission will not:

- engage in activities or use its resources in any manner to promote or support Tamil independence or the creation of a Tamil state;
- enter into any financial or operational arrangement with the Tamils Rehabilitation Organization (TRO) or other organizations engaged in the pursuit of activities in support of Tamil independence or the creation of a Tamil state; or

- allow its temple premises or other facilities to be used for any activities of individuals or groups involved in promoting, fundraising, or otherwise working to advance the political agenda of Tamil independence in Sri Lanka.

2) Corrective Measures Concerning Funding of Non-Qualified Donees

Where the Mission wishes to support the operations of another organization, it will commit funds only to organizations that are qualified donees as defined by the Act (see attached appendix).

The Mission will also ensure that when it wishes to make a gift to a qualified donee, it will obtain the exact name and BN/Registration number on the CRA Internet web site¹ of each recipient organization before transferring any funds, and will properly report these transactions by completing the Qualified Donees Worksheet (Form T1236) when filing its annual Registered Charity Information Return (T3010).

3) Corrective Measures Concerning the Use of an Agent and Lack of Direction and Control Over Resources

If the Mission wishes to use an agent to conduct activities on its behalf, the Mission must be able to establish that any acts that purport to be its own activities are effectively authorized, controlled, and monitored by it.

Prior to any transfer of resources, the Mission will enter into a valid, structured written agreement reflecting the Mission's authority over the actions of its agent and its ongoing direction and control over the use of resources transferred. A written agreement does not remove the Mission's responsibility to ensure that its resources are used to further the charitable purposes for which it is established, to actually undertake its responsibilities as the principal in the agency relationship, and to make certain that its resources are not made available, either directly or indirectly, to an entity that is a listed entity as defined in subsection 83.01(1) of the *Criminal Code of Canada* or to any other entity that engages in terrorist activities or activities in support of them.

The Mission undertakes to be able to provide the CRA with credible evidence that the activities to which its resources are devoted are, in fact and law, charitable activities being carried on by the Mission itself. At a minimum, this requires that the Mission be able to demonstrate that:

¹ Online: <<http://www.cra-arc.gc.ca/chrts-gvng/lstings/menu-eng.html>>. Accessed on 2011-02-23.

- It communicates a clear, complete, and detailed description of the activities to be conducted by an agent;
- It provides clear, complete, and detailed instructions to an agent on an ongoing basis;
- It conveys clear directions as to the nature and scope of decision-making being delegated to an agent and actively monitors and supervises its undertaking of the activities authorized by the agreement;
- It has taken steps to control and monitor the use by an agent of the resources provided to it and its use of those resources amounted to the carrying on by the Mission of its own charitable activities;
- It requires that its funds be segregated from those of an agent, and that an agent maintain separate books and records for activities undertaken on behalf of the Mission illustrating that the Mission's role in the activities being undertaken are identifiable as its own charitable activity rather than those of the agent. Specifically, an agent must maintain and provide on demand banking records evidencing the separation of the Mission's funds from its own;
- It has the authority to suspend payments to an agent and that payment schedules provide for periodic transfers of resources based on demonstrated performance of the agent;
- Its agent regularly provides some system of continuous and comprehensive documented reporting, including source documents as described in Information Circular IC78-10R5 – Books and Records Retention/Destruction², to the Mission reflecting the use of funds transferred to it;
- It has maintained in Canada all necessary books and records pertaining to its activities outside of Canada; and that
- It has conducted and documented due diligence measures taken in selecting an agent that are thorough, meaningful, and appropriate to the circumstances, and that will ensure that the Mission does not operate in association with individuals or groups that are involved in terrorism or in supporting a terrorist entity. It will not be a sufficient exercise of due diligence on the part of the Mission to include a clause in an agreement with an agent precluding the agent from supporting terrorism.

² Online: <<http://www.cra-arc.gc.ca/E/pub/tp/ic78-10r5/README.html>>. Accessed on 2010-07-08.

4) Corrective Measures Concerning Official Donation Receipts

The Mission will only issue official donation receipts that comply with the requirements of Regulation 3501(1) of the Act. The Mission undertakes to ensure that all official donation receipts issued in the future contain prescribed information pursuant to the Act including:

- A statement that the official donation receipt is an official receipt for income tax purposes;
- The serial number of the receipt;
- The name and address in Canada of the charity as recorded with the CRA;
- The charity's BN/registration number;
- The fair market value of the property transferred to the charity;
- The eligible amount of the gift;
- The full names and addresses of the donors;
- For property other than cash:
 - The day on which the charity received the donation
 - A brief description of the property donated
 - The name and address of the appraiser (if appraised);
- The place or locality where the receipt was issued;
- The signature of an authorized individual;
- The day on which the receipt was issued when it differs from the donation date;
- The name and Internet web site address of the CRA;
- The serial number of the replacement official receipt that replaces the original receipt that is retained by the charity;
- The word "cancelled" is marked on spoiled receipts and on a duplicate copy that is retained by the charity;
- A reconciliation of the official donation receipts to the receipted amounts reported on the T3010 returns and financial statements is prepared and provided on demand; and
- A list of all official donation receipts issued is maintained and provided on demand.

5) Corrective Measures Concerning Third Party Receipting

The Mission will only issue donation receipts for gifts intended to be made for the performance of its own activities. The Mission undertakes to not issue donation receipts for gifts intended for another unregistered organization, or to allow a non-registered organization to use its charitable registration number.

The completion of the audit does not give permission to destroy the books and records that were audited. The Mission must retain the records examined in accordance with the policy described in the Information Circular IC 78-10R5 – Books and Records Retention/Destruction.

It is the responsibility of the Mission to maintain and keep abreast of current legislation concerning its operations to ensure that it satisfies its registration requirements. An effective tool is to access the CRA Internet web site dealing with webinars, information sessions and other news.³

Date of Implementation of all Corrective Measures

The Mission shall implement all corrective measures on or before September 16, 2011 *cmv*:

By signing below, the parties certify that they have read, understood, and agree to the terms of this Compliance Agreement. The Mission further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the CRA may apply the penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Mission's authority to issue official receipts and suspension of its status as a "qualified donee". The CRA may, by registered mail, also give notice that it proposes to revoke the registration of the Mission by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.

K. Shanmugalaraj
Charity per: Authorized Signatory with
the authority to bind the Charity
K. SHANMUGARAJAH,
PRESIDENT
Name and position of signatory
(please print)

[Signature]
Witness

VIJAYASARKAR
Name of witness (please print)
[TREASURER]

HINDIA MISSION OF MISSISSAUGA,
1808, DREW ROAD, MISSISSAUGA,
ON, L5S 1J6
Full name and address of Charity

Date of signing: 08-01, 2011 *cmv*.

³ See the CRA Internet web site, Webinars, Information Sessions and Other News.
Online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/cmmnctn/menu-eng.html>. Accessed on 2010-07-19.

[REDACTED]
CRA per: _____

[REDACTED]
Name and position of signatory
(please print)

Date of signing: FEBRUARY 13, 2012 [REDACTED]